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NORTH ATLANTIC COAST FISHERIES

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PROCEEDINGS

IN THE

North Atlantic Coast Fisheries  
Arbitration

BEFORE

THE PERMANENT COURT OF ARBITRATION  
AT THE HAGUE

UNDER THE PROVISIONS OF THE GENERAL TREATY OF  
ARBITRATION OF APRIL 4, 1908, AND THE SPECIAL  
AGREEMENT OF JANUARY 27, 1909, BETWEEN  
THE UNITED STATES OF AMERICA  
AND GREAT BRITAIN

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(IN TWELVE VOLUMES)

VOLUME VII

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NORTH ATLANTIC COAST FISHERIES.

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COUNTER-CASE

PRESENTED ON THE PART OF

THE GOVERNMENT OF HIS  
BRITANNIC MAJESTY

TO THE

TRIBUNAL CONSTITUTED UNDER AN AGREEMENT SIGNED  
AT WASHINGTON ON THE 27TH DAY OF JANUARY,  
1909, BETWEEN HIS BRITANNIC MAJESTY AND  
THE UNITED STATES OF AMERICA

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NOTE.—This volume contains also the Appendix to the Counter-Case

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# THE COUNTER-CASE OF HIS BRITANNIC MAJESTY'S GOVERNMENT.

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## INTRODUCTION.

In the Case presented on behalf of His Britannic Majesty's Government, an endeavour has been made to marshal the facts bearing on each of the questions referred to the Tribunal, and to state in a clear form the British contentions with an outline of the arguments by which they are supported.

The Case of the United States (p. 6) is framed on different lines. It gives a summary of the events which led up to the treaty of 1818, and a history of the transactions between the parties since that time, but the reasons and grounds on which the position of the United States is sought to be sustained are not specified. There is some general comment in the course of the historical summary, but there is nowhere any clear indication of the grounds on which reliance is placed. Indeed it is stated, in the opening chapter, that this will be deferred until the later stage, when written and oral arguments are addressed to the Tribunal.

It is not possible to deal with the contentions of the United States until they are formulated in a definite way, and it is therefore proposed in this Counter-Case to offer some observations of a general character only, in reply to the Case of the United States, and to discuss some of the questions of fact raised in it.

2 His Majesty's Government desires to submit to the Tribunal two points by way of introduction to this Counter-Case:

1. The questions referred to the Tribunal must be determined by the terms of the treaty of 1818. There has been much discussion during the ninety years that have elapsed since its date, and a considerable portion of the Cases presented by the two Governments is occupied by an examination of the correspondence which has passed between them. These matters cannot be put altogether out of consideration, but the construction of the treaty must primarily depend on the language used in it, and the meaning of that language cannot be altered by diplomatic correspondence of a later date. So far as the correspondence can legitimately be looked at, His Majesty's Government submits that it bears out the meaning which, upon the

language of the treaty itself, His Majesty's Government attributes to it.

2. His Majesty's Government observes that some attempt has been made in the Case of the United States to draw a distinction between the action of Great Britain and that of the Colonies.

It appears to be suggested that, at some times and on some points, the British Government did not take the same view of the construction of the treaty as the Colonial Governments, and that Great Britain was indisposed to claim the full rights for which the Colonies contended. The evidence before the Tribunal lends no support to this suggestion, and His Majesty's Government desires to record an emphatic dissent from it.

There have been periods when the British Government, for reasons of Imperial policy, has been anxious to avoid the possibility of friction with the United States and has, for a time, been willing to forego the enforcement of the treaty to its full extent. But the British Government has never expressed any disagreement with the Colonies as to the construction of the treaty on any single one of the points now under discussion. On the contrary, it will be found that throughout the correspondence Great Britain has repeatedly declared her concurrence in the view taken by the Colonial Governments, and even in cases in which it has seemed inadvisable for a time to enforce the treaty in its entirety, the concession has been invariably  
3 accompanied by a statement of the full rights which Great Britain and the Colonies alike claimed.

Complaint is made in the Case of the United States of aggressive action on the part of the Colonies and of the extreme view taken by them of their rights. This appears to be a subject which is not material to the issues now under discussion, but in case, at any stage, the Tribunal should desire to enquire into it, His Majesty's Government will be prepared to deal with it fully. A consideration of the evidence will show that there is no ground for the complaint made on this head in the United States Case.

For the same reasons which prevent the British Government from entering at the present stage into any details with regard to the complaint made as to the conduct of the Colonial Governments, His Majesty's Government also abstains from setting out the complaints which might be made with regard to the action of the United States Government, in connection with the disputes which from time to time arose. Both heads of enquiry are alike irrelevant.

## QUESTION ONE.

### RIGHT OF REGULATION.

#### PRELIMINARY.

In the argument on this question presented in the British Case, it has been shown that the provisions of the treaty of 1818 do not impose any restriction on the sovereignty of Great Britain over the waters and shores in question, and that the right to make regulations with regard to the conduct of the fisheries granted by the treaty resides with the British and Colonial Legislatures, and with them alone. The treaty operates, as has been there submitted, simply as an agreement, by which Great Britain undertook not to exercise her sovereignty so as to nullify the liberties conferred by the treaty, or to make unfair discrimination as against American fishermen.

The considerations on which this conclusion is based are not discussed in the Case of the United States (pp. 8-10). Their contention is stated in the following passage:—

The United States and Great Britain thus met as independent nations negotiating for the purpose of concluding a treaty of peace dividing between them the British Empire in North America; and standing on this basis the Commissioners on the part of the United States asserted and insisted throughout the negotiations that the British interests in the North Atlantic Coast fisheries were subject to such division and that the preexisting rights of the Colonies therein must be recognized and continued by the treaty.

The people of the Massachusetts Bay Colony and of the other Colonies had continuously and freely resorted to these fisheries and exercised unrestricted fishing rights and liberties there until the time of the Revolution, and had borne almost unaided the burden of maintaining and defending their own and British interests in these fisheries against the aggressions of the French during the wars between Great Britain and France. In view of such continuous usage and enjoyment and by virtue of the services rendered by them in defence of these fisheries, the American Colonies asserted and insisted that they had in them at least the equal rights of joint owners with Great

Britain and the other British Colonies. John Adams, one of the American Commissioners in the peace negotiations, bears witness, in a statement written by him in 1822 in review of these negotiations, that the grounds and principles on which the fisheries article of the treaty of 1783 was contended for on their part and finally yielded on the part of Great Britain were among others the following:

"That New England, and especially Massachusetts, had done more in defence of them than all the rest of the British Empire. That the various projected expeditions to Canada, in which they were defeated by British negligence, the conquest of Louisburg, in 1745, and the subsequent conquest of Nova Scotia, in which New England had expended more blood and treasure than all the rest of the British Empire, were principally effected with a special view to the security and protection of the fisheries.

"That the inhabitants of the United States had as clear a right to every branch of those fisheries, and to cure fish on land, as the inhabitants of Canada or Nova Scotia; that the citizens of Boston, New York, or Philadelphia, had as clear a right to those fisheries, as the citizens of London, Liverpool, Bristol, Glasgow, or Dublin.

and further:

"We considered that treaty as a division of the empire. Our independence, our rights to territory and to the fisheries, as practised before the Revolution were no more a grant from Britain to us than the treaty was a grant from us of Canada, Nova Scotia, England, Scotland, and Ireland to the Britons. The treaty was nothing more than mutual acknowledgment of antecedent rights."

The suggestion thus put forward is, apparently, that the treaty of 1818, in regard to the fisheries, is a continuance of the treaty of 1783; that the latter treaty was in effect a partition of the British North American fisheries between two joint owners; and that it follows that Great Britain cannot have any right to legislate in respect of the fishery carried on by American citizens on the shores or in the waters to which they have liberty of access under the treaty of 1818.

His Majesty's Government demurs, in passing, to the reasoning by which this contention is supported. The United States do not claim sovereignty over these territories or over these waters; and have no right of legislation in respect of them. The sovereignty remains in

Great Britain, and, therefore, in the absence of any exemption  
 7 in the treaty, American fishermen are necessarily subject to British legislation. Moreover, if their claim to fish be based on the ground that it is a continuance of the right which they enjoyed as British subjects, and that appears to be the American contention, then it is clear that they take the right subject to British control. They cannot claim to have the right freed from the obligations under which it was previously enjoyed, for that would be a different and a greater right.

#### TREATY WAS NOT A PARTITION.

But the point does not merit discussion, because the assumption on which the whole argument is based is altogether without warrant. The treaty of 1783 was not and could not have been a partition of the British North American fisheries. The thirteen American Colonies took up arms, and in 1776 declared themselves to be

independent States absolved from all allegiance to the British Crown. From that time onwards they claimed to exercise uncontrolled sovereignty over the territories within their respective jurisdictions as then constituted, but, by the very repudiation of their allegiance, the inhabitants of those States necessarily surrendered any rights they had previously enjoyed as British subjects in other parts of the Empire. From 1776 onward, the thirteen Colonies claimed to be free and independent States, and received recognition as such from other countries. And recognition of their independence by Great Britain was insisted on as a preliminary to the negotiation for the termination of the war.

The remaining British Colonies in North America (and they included the whole of the British territory outside the thirteen States) did not at any time join in the rebellion; they adhered to Great Britain, and never passed from British possession. By the treaty of 1783, the King of England formally acknowledged the relinquishment of sovereignty over the thirteen Colonies; but no question was ever raised, or could ever have been raised, as to the sovereignty over the other Colonies, for that was not affected by the war.

If the treaty of 1783, so far as it related to the fisheries, was a partition of common property between joint owners, the question would at once arise, Who were these joint owners? They could not have been the Crown of Great Britain on the one hand, and the thirteen Colonies on the other, for the Colonies never had any rights of ownership in respect of these territorial fisheries. And it cannot be suggested that the owners were the individual citizens of the thirteen Colonies, and the individual subjects of the British Empire.

The true view, it is submitted, is that there could have been at the date of the treaty no such joint ownership as is suggested by the United States, and that the sole and entire ownership of the fisheries was vested in the British Crown.

The negotiations which preceded the articles of 1782 will be found fully recorded in the papers printed in the appendix to this Counter-Case, and the discussions are set out there in detail, but there is no single suggestion throughout these negotiations of any such claim to British territory or to British territorial waters as is now put forward. On the contrary, the instructions sent by Congress in 1779, and the contentions of the United States Commissioners at that time, are, as will presently be shown, altogether opposed to any such claim.

Moreover, later documents in the appendix go even further than this; they establish beyond doubt that this theory of partition was put forward for the first time at Ghent on the 1st November, 1814, no less than thirty-two years after the date of the preliminary articles of independence.

His Majesty's Government further contend that the whole of the United States Case as to the treaty of 1783 is irrelevant. Whatever were the fishing liberties conceded in 1783, they were terminated by Great Britain on the occasion of the war in 1812, and the concessions of 1818 were a fresh grant and not a renewal of those of 1783.

PROCEEDINGS IN CONGRESS, 1779-1782.

Reviewing the proceedings of the United States Congress prior to the negotiations of 1782, it will be observed that in the first instance a committee reported (23rd February, 1779) that one of the ultimata to be insisted on should be (App., p. 10)—

That a right of fishing and curing fish on the banks and coasts of the Island of Newfoundland, equally with the subjects of France and Great Britain, be reserved, acknowledged, and ratified to the subjects of the United States.

This very limited demand was, when Congress resolved itself into Committee of the Whole, expanded to the following (App., p. 12):—

9 That a common right in these States to fish on the coasts, bays and banks of Nova Scotia, banks of Newfoundland, and gulf of St. Lawrence, coast of Labrador and straits of Belleisle, be acknowledged, and in case of refusal, that the war be continued, unless the circumstances of our Allies shall be such as to render them utterly unable to assist in the prosecution of the war; in which case, as ample privileges in the fishery be insisted on as can possibly be obtained:

That in case Great Britain should not be prevailed upon either to cede or declare Nova Scotia independent, the privilege of curing fish on the shores and in the harbours of Nova Scotia be required.

In Congress itself the demand was (22nd March) stated as follows (App., p. 14):—

That an acknowledgment be made by Great Britain of a common right in these states to fish on the coasts, bays and banks of Nova Scotia, the banks of Newfoundland, and gulf of St. Lawrence, the coasts of Labrador and straits of Belleisle. Provided always, that the allies of these states shall be in circumstances to support them in carrying on the war for such acknowledgment; but that in no case, by any treaty of peace, the common right of fishing as above described be given up.

For this resolution, Congress, two days afterwards (24th March), substituted the following (App., p. 14):—

That the right of fishing on the coasts and banks of North America be reserved to the United States as fully as they enjoyed the same when subject to the King of Great Britain, excepting always what shall have been excepted by the treaty of Paris between France and the United States—the whole to be explained by the treaties of Utrecht and Paris with Great Britain, and of Paris with the United States of North America.



The treaty last referred to, was as follows (App., p. 3) :—

Article X. The United States, their citizens and inhabitants, shall never disturb the subjects of the most Christian King in the enjoyment and exercise of the right of fishing on the banks of Newfoundland, nor in the indefinite and exclusive right which belongs to them on that part of the coast of that island which is designed by the treaty of Utrecht; nor in the rights relative to all and each of the isles which belong to His Most Christian Majesty; the whole conformable to the true sense of the treaties of Utrecht and Paris.

Instead, therefore, of claiming, as originally suggested, a share in such fisheries as France was interested in, Congress now demanded a common right with Great Britain—"as fully as they enjoyed the same when subject to the King of Great Britain"—in everything, except what had already been assigned to France.

10 It is specially noteworthy that while the resolution of the 22nd March referred to "coasts, bays, and banks," the resolution of the 24th dropped the word "bays," and that from all subsequent resolutions the word "coasts" also was omitted—the expression afterwards used being "banks and seas." From the 24th March on, nothing is heard of any claim to fish in British bays, or upon British coasts. Upon the contrary, it will be seen that Congress expressly declared that the United States made no such claim.

Previous resolutions having been rescinded, renewed consideration of the subject was initiated by Mr. Gerry's resolutions of the 19th June, 1779, which were as follows (App., p. 16) :—

1. That it is essential to the welfare of these United States that the inhabitants thereof, at the expiration of the war, should continue to enjoy the free and undisturbed exercise of their common right to fish on the banks of Newfoundland, and the other fishing banks and seas of North America, preserving inviolate the treaties between France and the said states.

2. That an explanatory article be prepared and sent to our minister plenipotentiary at the court of Versailles, to be by him presented to his most Christian Majesty, whereby the said common right to the fisheries shall be more explicitly guaranteed to the inhabitants of these states than it already is by the treaties aforesaid.

3. That in the treaty of peace with Great Britain a stipulation be made, on their part, not to disturb the inhabitants of these states in the free exercise of their common right to the fisheries aforesaid; and that a reciprocal engagement be made on the part of the United States.

4. That the faith of Congress be pledged to the several states, that, without their unanimous consent, no treaty of commerce shall be formed with Great Britain previous to such stipulation.

5. That if the explanatory article should not be ratified by his most Christian Majesty, nor the stipulation aforesaid be adopted by Great Britain, the Minister conducting this business shall give notice thereof to Congress, and not sign any treaty of peace until their pleasure be known.

On the 24th June, the first of these resolutions was adopted by Congress. Various amendments were proposed, but no one suggested the expansion of the words "fishing banks and seas" so as to include either coasts or bays. (App., p. 17.)

On the 1st July, the second of Mr. Gerry's resolutions was adopted. (App., p. 18.)

11 Instead of Mr. Gerry's fourth resolution, Congress, commencing a series of disclaimers of any right to British coast-fisheries, adopted (22nd July) the following resolution (App., p. 18):

That the faith of Congress be pledged to the several states, that without their unanimous consent, no treaty of commerce shall be entered into, or any trade or commerce whatever carried on with Great Britain, without an explicit stipulation on her part not to molest or disturb the inhabitants of the United States of America in taking fish on the banks of Newfoundland and other fisheries in the American seas anywhere, excepting within the distance of three leagues of the shores of the territories remaining to Great Britain at the close of the war, if a nearer distance cannot be obtained by negotiation.

As an addition to Mr. Gerry's resolutions, Congress adopted (29th July) the following (App., p. 19):—

*Resolved*,—That, if after a treaty of peace with Great Britain, she shall molest the citizens or inhabitants of any of the United States in taking fish on the banks and places described in the resolution passed the 22d day of July, instant, such molestation (being in the opinion of Congress a direct violation and breach of the peace) shall be a common cause of the said states; and the force of the union be exerted to obtain redress for the parties injured.

Mr. Gerry's third and fifth resolutions were not agreed to.

It will be observed that the final demand of Congress is limited to fishing on the banks and seas and that the coast fisheries are excluded. Indeed, the proposal to claim a right of fishing on British coasts and British bays was expressly rejected after full discussion.

Having adopted the foregoing resolutions, Congress proceeded to the consideration of "instructions to the Minister to be appointed for negotiating a peace." Among those instructions was the following (App., p. 23):—

Although it is of the utmost importance to the peace and Commerce of the United States that Canada and Nova Scotia should be ceded, and more particularly that their equal common right to the Fisheries should be guaranteed to them, yet a desire of terminating the war hath induced us not to make the acquisition of these objects an ultimatum on the present occasion.

It will be well to bear in mind (for the expression is of frequent occurrence) that the "common right to the fisheries" meant, in the intention of Congress (*Ante*, p. 10)—

the banks of Newfoundland, and the other fishing banks and seas of North America,

12 and did not include the coasts or bays of British territory, nor the waters within 3 leagues of British shores. The phrase did not, of course, include any right upon the soil itself.

The instructions of Congress to the Commissioner to be appointed to negotiate a treaty of commerce with Great Britain were in accordance with the policy expressed in the resolutions to which attention has been called. So far as they related to the fisheries, they were as follows (App., p. 23):—

2ly.—In order that you may be the better able to act with propriety on this occasion, it is necessary for you to know that we have determined 1st That the common right of fishing shall in no case be given up. 2nd That it is essential to the welfare of all these United States, that the Inhabitants thereof at the expiration of the war should continue to enjoy the free and undisturbed exercise of their common right to fish on the Banks of Newfoundland, and the other fishing banks and seas of North America, preserving inviolate the Treaties between France and the said States. 3ly That application shall be made to his Most Christian Majesty to agree to some article or articles for the better securing to these States a share in the said fisheries. 4ly That if after a treaty of peace with Great Britain she shall molest the Citizens or Inhabitants of any of the United States in taking fish on the Banks and places hereinafter described, such molestation, being in our opinion a direct violation and breach of the peace, shall be a common cause of the said States, and the force of the Union be exerted to obtain redress for the parties injured. And 5ly That our faith be pledged to the several States, that without their unanimous consent no treaty of commerce shall be entered into, nor any trade or commerce whatever carried on with Great Britain, without the explicit stipulation herein after mentioned. You are therefore not to consent to any Treaty of Commerce with Great Britain without an explicit stipulation on her part not to molest or disturb the Inhabitants of the United States of America in taking fish on the Banks of Newfoundland and other fisheries in the American Seas any where, excepting within the distance of three leagues of the Shores of the Territory remaining to Great Britain at the close of the war, if a nearer distance cannot be obtained by negotiation—and in the negotiation you are to exert your most strenuous endeavours to obtain a nearer distance to the Gulf of St. Lawrence, and particularly along the shores of Nova Scotia. As to which latter we are desirous, that even the Shores may be occasionally used for the purpose of carrying on the Fisheries by the Inhabitants of these States.

Similarly, in the instructions to the Minister Plenipotentiary of the United States at the Court of France he was directed to endeavour to obtain agreement to the following (App., p. 24):—

13 That if, after the conclusion of the treaty or treaties which shall terminate the present war, Great Britain shall molest or dis-

turb the subjects or Inhabitants of the said United States in taking fish on the Banks, seas and places formerly used and frequented by them, so as not to encroach on the territorial rights which may remain to her after the termination of the present war as aforesaid, and war should thereupon break out between the said United States and Great Britain; or if Great Britain shall molest or disturb the subjects and Inhabitants of France in taking Fish on the Banks, Seas and places formerly used and frequented by them, so as not to encroach on the territorial rights of Great Britain as aforesaid, and war should thereupon break out between France and Great Britain. In either of those cases of war as aforesaid His Most Christian Majesty and the said United States shall make it a common cause, and aid each other mutually with their good offices their counsel and their forces, according to the exigence of conjunctures as becomes good and faithful allies.

Those proceedings of Congress were in 1779. On the 8th January, 1782 (the very year in which the preliminary Articles of Peace were signed) a committee of Congress, in dealing with a petition of the State of Massachusetts, distinctly declared that the American claim (App., p. 29)—

does not extend to any parts of the sea lying within three leagues of the shores held by Great Britain or any other nation.

Part of the report was as follows (App., p. 28) :—

Another claim is the common right of the United States to take fish in the North American seas, and particularly on the banks of Newfoundland. With respect to this object, the said Ministers are instructed to consider and contend for it, as described in the instructions relative to a treaty of commerce, given to John Adams on the twenty-ninth of September, 1779, as equally desired and expected by Congress with any of the other claims not made ultimate in the instructions given to the Ministers plenipotentiary for negotiating a peace on the            day of            last, and are therein referred to as objects of the desires and expectations of Congress. They are also instructed to observe to His Most Christian Majesty with respect to this claim, that it does not extend to any parts of the sea lying within three leagues of the shores held by Great Britain or any other nation. That under this limitation it is conceived by Congress, a common right of taking fish cannot be denied to them without a manifest violation of the freedom of the seas, as established by the law of nations, and the dictates of reason; according to both which the use of the sea, except such parts thereof as lie in the vicinity of the

14 shore, and are deemed appurtenant thereto, is common to all nations, those only excepted who have either by positive convention, or by long and silent acquiescence under exclusion, renounced that common right.

#### SUMMARY.

These quotations make the following propositions indisputable :—

1. No claim at all was made by the United States to any rights upon British soil. In the resolutions declaratory of its demands,

Congress said no word upon that subject. And in its instructions to its commissioners it merely expressed a limited desire as to the Nova Scotia shores only (*ante*, p. 12) :—

we are desirous, that even the Shores [of Nova Scotia] may be occasionally used for the purpose of carrying on the Fisheries by the Inhabitants of these States.

2. While in the resolution of the Committee of the Whole a claim was made to “coasts, bays, and banks,” Congress, after debate, struck out the word “bays” and the word “coasts,” and always, afterwards, the claim was limited to “banks and seas,” express renunciation being made of any claim to the fishery within 3 leagues of British shores.

3. The assertion of fishing rights in one set of instructions was confined to (*ante*, p. 12)—

the Banks of Newfoundland and other fisheries in the American Seas any where, excepting within the distance of three leagues of the Shores of the Territory remaining to Great Britain at the close of the war, if a nearer distance cannot be obtained by negotiation—

and in the other set was confined to (*ante*, p. 13)—

the Banks, seas and places formerly used and frequented by them, so as not to encroach on the territorial rights which may remain to her after the termination of the present war as aforesaid.

4. In 1782, a Committee of Congress expressly said with respect to the claim of (*ante*, p. 13)—

the common right of the United States to take fish in the North American seas, . . . that it does not extend to any parts of the sea lying within three leagues of the shores held by Great Britain or any other nation.

5. Nowhere is there any suggestion of, or proposal for, a division of the coast-fisheries as being assets held by joint-owners. In 15 the resolution of the 24th March the right of fishing was demanded for the United States (*ante*, p. 9)—

as fully as they enjoyed the same when subject to the King of Great Britain,

On the 3rd of June, however, Congress voted to strike out of a proposed resolution the equivalent words, namely (App., p. 16) :—

“as fully and freely as they did or might have done during their political connection.”

And no such words ever again re-appeared.

6. The expression “the common right of fishing” was applied to the ocean-fisheries. It did not apply to the coast-fisheries.

7. The suggestion on p. 12 of the United States Case, that there would have been no treaty of peace at all had not the British Commissioners agreed to the fishery demands of the American Commissioners, is contradicted by the specific instructions of Congress that

the guarantee of the fisheries was not to be made "an ultimatum on the present occasion."

These conclusions make it abundantly clear that no claim as of right to the coast fisheries was put forward by Congress, and that no demand was at any time made for a division of those fisheries on the ground that they were the joint assets of the two nations.

#### NEGOTIATIONS IN 1782.

The same observation holds good of the negotiations in 1782. The material papers have been printed in the appendix to this Counter-Case, and they show that from first to last no suggestion was made of any claim based on the theory of joint ownership.

The question as to the right of fishing on the banks and in the high seas did not provoke serious discussion, for Great Britain acquiesced in that part of the demand of the United States.

On the 19th November, 1782, Mr. Townshend sent to Mr. Strachey a draft of a proposed treaty. The clause relating to fisheries in that draft was as follows (App., p. 96) :—

Art. 3d. The citizens of the United States shall have the liberty of taking fish of every kind on all the banks of Newfoundland, and also in the Gulf of St. Lawrence, and also to dry and cure their fish on the shores of the Isle of Sables and on the shores of any of the unsettled bays, harbours, and creeks of the Magdalen Islands in the Gulf of St. Lawrence, so long as such bays, harbours and creeks shall continue and remain unsettled. On condition that the citizens of the said United States do not exercise the said fishery but at the distance of Three leagues from all the coasts belonging to Great Britain, as well those of the continent, as those of the islands situated in the Gulf of St. Lawrence. And as to what relates to the fishery on the coasts of the island of Cape Breton out of the said gulf, the citizens of the said United States shall not be permitted to exercise the said fishery, but at the distance of fifteen leagues from the coasts of the island of Cape Breton.

On the 25th November, this draft was discussed with the American negotiators, and Mr. Adams has recorded in detail, in his journal (App., p. 101), the reasons by which he supported his plea for some modification of the limitations proposed in it. It is significant that he did not advance any claim to the coast fisheries on the ground that they were in part the property of the United States. That would have been a reason of force had he been able to sustain it, but there is no reference to it of any kind whatever. The grounds on which he urged the concession were quite different. *Inter alia*, they were that Great Britain profited by the purchase of her manufactures by American fishermen, and that American fishermen could not be effectually prevented from fishing in all the waters prohibited in the draft, and that there would be constant disputes if any attempt were

made to do so. The same arguments (App., p. 102) were repeated the next day, and again no suggestion was made of any claim as of right. It is impossible to suppose that Mr. Adams would not have put forward a claim on behalf of the United States as joint owners on these occasions if he had regarded any such claim as sustainable.

From an entry in Mr. Adams' journal (28th November) (App., p. 103) it appears that he drafted an article by which he distinguished between the "right" to take fish (both on the high seas and on the shores) and the "liberty" to dry and cure fish on the land. But on the following day, he presented to the British negotiators a draft in which he distinguished between the "right" to take fish on the high seas and the "liberty" to take fish on the coasts, and to dry and cure fish on the land.

17 The British Commissioners called attention to the distinction thus suggested by Mr. Adams, and proposed that the word "liberty" should be applied to the privileges both on the water and on the land. Mr. Adams thereupon rose up and made a vehement protest, as is recorded in his diary, against the suggestion that the United States enjoyed the fishing on the banks of Newfoundland by any other title than that of right, and the word "right" was retained in the case of the high-seas fishery. The application of the word "liberty" to the coast fisheries was left as Mr. Adams proposed. His draft clause, without amendment, became a part of the treaty.

The incident is of importance, since it shows that the difference between the two phrases was intentional. It shows further, that the American negotiators recognized that fishing on the high seas was in a different position from that in the coast waters, and that they did not claim the coast fishery as of right. It is absolutely inconsistent with the suggestion that the American negotiators regarded the United States as co-owners of the coast fisheries.

#### ORIGIN OF THE DOCTRINE OF PARTITION.

The papers printed in the appendix show that the idea, that the treaty of 1783 was in the nature of a partition of joint property between two co-owners, was first conceived by John Quincy Adams (App., p. 138) at a meeting of the American Commissioners at Ghent on the 1st day of November, 1814, and that it had not occurred to his colleagues as a possible line of argument before that date.

The Commissioners, at their meeting on that day, were unable to agree on a form of draft in respect of the navigation of the Mississippi and the fisheries. One party was in favour of sacrificing the fisheries if the British representatives could be induced by that surrender to give up their claim to the navigation of the Mississippi. The other party desired the retention of the fisheries at all costs. Mr. Gallatin proposed a draft providing for the renewal of both rights, but his

colleagues were divided in opinion. It was then that Mr. Adams, for the first time, made the suggestion, as an alternative, that  
 18 the matter of the fisheries should be dropped out of the negotiations altogether, and the ground taken that (App., p. 138)—the whole right to the fisheries was recognized as a part of our national independence, that it could not be abrogated by the war, and needed no stipulation for its renewal.

His suggestion was not accepted at the time, but on the 7th November it was again discussed and was then agreed to, as appears from Mr. Adams' diary of that date, as a compromise. Mr. Russell, one of the negotiators, during a subsequent controversy with Mr. Adams, speaks of the incident in the following terms (App., p. 162):—

The principle, that the treaty of 1783 was not, on account of its peculiar character, abrogated by the war, Mr. Adams not only *re-asserts*, but alleges to have obtained, when first suggested by him at Ghent, the *unanimous* assent of the American mission. The proof of this allegation appears to be inferred from the signature, by *all* that mission, of a note, to the British ministers, of the 10th of November, in which that principle was partially adopted. It has already been seen, even from the avowal of Mr. Adams himself, that the paragraph, offered by Mr. Clay, admitting that doctrine, was a *substitute* to a proposition which the minority had opposed. To adopt, partially, *in the spirit of compromise*, a doctrine, as a pretext to preserve the fishing privilege and to get rid of a proposition confirmative of the British right to the navigation of the Mississippi, cannot fairly be considered as an unanimous acknowledgment by the American mission, of the orthodoxy of that doctrine. The constitution of the United States was, avowedly, the result of compromise, and thence some, at least of those who signed that instrument, must necessarily have subscribed to provisions which they did not desire, and to opinions which they did not approve. The inference of Mr. Adams is, therefore, not correct. I do not recollect (indeed, that any member of the mission, excepting Mr. Adams himself, appeared to be a very zealous believer in that doctrine. Even Mr. Gallatin, in his separate letter of the 25th of December, 1814, speaks only of this doctrine as one that had been *assumed*. Sure it is that the minority consented to admit that doctrine as an expedient only to prevent the proposition, already decided on by the majority, from constituting an article of our project. So far and no farther were the minority willing to go in adopting that doctrine, but whenever it was proposed to sanction the British right to navigate the Mississippi, they uniformly resisted it.

In Mr. Russell's separate Report to the Secretary of State (App., p. 150) he expressed his entire dissent from Mr. Adams' view,  
 19 and stated that in his opinion the point was not tenable. The opinions of other members of the Commission to the same effect might be referred to, although the point was adopted by the Commission as a weapon for negotiation.



In consequence of the decision of the Commission, the American note of the 10th November, 1814, claimed in regard to the fisheries that (App., p. 138)—

From their nature, and from the peculiar character of the treaty of 1783, by which they were recognised, no further stipulation has been deemed necessary by the government of the United States to entitle them to the full enjoyment of all of them.

The British Commissioners challenged this contention at once, and on every occasion when it was put forward. In his despatch of the 30th October, 1815, Lord Bathurst refers to it in the following terms (British Case, App., p. 69):—

A pretension of this kind was certainly intimated on a former occasion, but in a manner so obscure that His Majesty's Government were not enabled even to conjecture the grounds upon which it could be supported.

In 1815 Mr. Adams made an elaborate presentment of his argument (British Case, App., p. 64) in the despatches exchanged with Lord Bathurst and Lord Castlereagh, and it is from that time, that the full claim of the United States on this point must be taken to have been adopted by the Government of that country. It has been invariably rejected by Great Britain on every occasion on which it has been raised.

#### FORM OF THE TREATY OF 1783 INCONSISTENT WITH UNITED STATES CONTENTION.

It is further submitted that the form of the treaty of 1783, and of the preliminary articles, is altogether inconsistent with the view of the United States. They contain no suggestion of partition. In form they constitute a relinquishment by the King of England of his claim to "the Government property and territorial rights" of the areas constituting the thirteen United States, and nothing more. There is no reference to the rights of Great Britain over the remaining portions of North America, nor any agreement by the United States to concur in the retention of those areas by Great Britain.

The sovereignty of the King of England is assumed to continue over the whole of the British North American possessions with the exception of those parts which are specifically dealt with in article 1, that is, the territories of the thirteen States as defined in that and the subsequent article. The provision in regard to the fisheries, recognises the continuance of the right of the United States to fish in the high seas, but the liberty to fish in British waters is conceded in different terms; it is not treated as a continuance of an existing right, but is a fresh grant made by and dependent on the treaty. It has already been pointed out, that the distinction between a "right" and a "liberty" was present to the minds

of the negotiators in 1782. (*Ante*, p. 17.) The representatives of the United States refused to agree to the use of the term "liberty" in regard to the sea fishery, which they claimed as a right in common with other nations, but they accepted it in regard to the fisheries in British waters, which they took only as a concession.

MR. POMEROY.

The point has been much discussed in America, and it is stated in a convenient form in the following extracts from the opinions of two writers who have examined the matter in some detail. Professor Pomeroy, in an article in the "American Law Review," (1871, vol. v, p. 389), on the North-Eastern Fisheries, speaks of the partition theory in the following terms:—

The analogy suggested between the treaty of 1783 and a partition among co-owners of their lands and the rights issuing therefrom previously held in common, is more fanciful than sound. That treaty created and conferred a liberty, and did not merely recognize a subsisting right, to fish in the Canadian territorial waters. This must be conceded at the outset, and our further discussion will be based upon the concession.

MR. HENDERSON.

Mr. John B. Henderson, in his "American Diplomatic Questions" published in 1901, says:—

The American commissioners went still farther to substantiate their contention that the inshore fisheries of Canada and the right to use Canadian shores for curing and drying fish belonged to the United States as an inviolable right. They maintained that as these liberties of fishing were not created, but merely defined and recorded by the third article of the Paris treaty, that article, like all treaty clauses pertaining to matters of partition or boundaries or territory, was of that particular class of treaty articles which is permanent and not affected by subsequent suspension of friendly relations between the parties. Thus they considered their position doubly strengthened, and beyond question correct.

21 The arguments of Mr. Adams and the members of the commission who supported him were clearly unsound. While British colonists, the Americans certainly possessed all the rights of other English subjects in British territorial waters, and shared with them the obligations and duties which such possession imposed. These obligations had called for the protection of the fisheries against French aggressions, and the American colonists answered the call as a duty, and performed it well. After the war of independence, England retained Nova Scotia, Newfoundland, and Labrador, and as an inseparable condition the jurisdiction over their marginal belts of ocean; the Americans ceased to be British subjects, and were at once relieved of all duties and obligations to defend English territory or protect English waters, and in a like manner they were

certainly deprived of the privileges of ownership over such alien territory and waters. Had the contention of Mr. Adams been sound, the United States with equal justice could have pressed a claim for possession of Quebec or Halifax, for by the "common sword and mingled blood of Americans and Englishmen" those strongholds were won and defended. By the same argument the English could have claimed the right to navigate the Mississippi River, which had been conceded to them by the treaty of 1783, and which Mr. Clay (one of the commissioners at Ghent) declared to be forfeited by the War of 1812.

Again, had the United States an inherent and natural right to the inshore fisheries of Canada, and to the perpetual use of its shores, why had these shore privileges been limited by the treaty of Paris? Why had the United States accepted the privilege of curing and drying fish in Nova Scotia and Labrador, and relinquished it in Newfoundland? If American citizens had been entitled as of right to use a part of the Canadian coast, they were equally entitled to use all of it. On the Newfoundland coast, where shore privileges were most desired, and where long usage would have set up an easement or prescriptive title fully as well as to the Nova Scotia or Labrador coast, Americans had been denied all landing privileges.

Furthermore, a review of the instructions of Congress to the commissioners, who negotiated the treaty of Paris, develops the fact that it had not been the intention or object of the United States Government to insist upon a continuance of the inshore fisheries which had formerly been enjoyed as a right. Congress did insist on the right to fish on the "Banks of Newfoundland and other fisheries in the American seas, anywhere excepting within the distance of three leagues of the shores of the territory remaining to Great Britain at the close of the war, if a nearer distance cannot be obtained by negotiation." A full expression of the policy of the government in 1782 is given in a report of a committee of Congress on certain resolutions adopted by the legislature of Massachusetts touching the fisheries (1781). An elaborate argument is there set forth to

22 demonstrate the freedom of the high seas, and to prove that the Bank fishery may not be properly appropriated by any power. These Banks, "the nearest point of which is thirty-five leagues distant from Cape Race, are too far advanced in the Atlantic to be a dependence of the shores." Thus a distinction was at that time made between the Bank and the shore fishery. All expressions of Congress signifying a determination to retain the fisheries, at all hazards, refer only to the *open sea* fisheries; for at that period of uncertainty it was feared that England might even refuse to yield her pretended sovereignty over the Banks. The spirit of John Adams' instructions in 1782, as gathered from congressional actions previously taken upon the subject, was to insist as a right upon the freedom of the high seas for American fishermen, and to secure for them by negotiation the largest possible inshore privileges. Finally, it will be noted that in the third article of the treaty itself the word "right" is used in connection with the Bank and deep sea fishery, and the word "liberty" with reference to the shore fishery.

## MR. WEBSTER.

These opinions are enforced by the authority of Mr. Daniel Webster. In a draft of a paper he was preparing in 1852 he wrote as follows (United States Case, App., p. 531) :—

The undersigned now takes leave to draw Mr. Crampton's attention to a more general consideration. He has already observed that from the first, this Government has regarded a distinction which is thought to be fundamental and of much importance, between rights and liberties, or privileges. This distinction pervades the whole of the third Article of the Treaty of 1783.

By that article the *right*, not the liberty or the privilege, but the *right* to take fish of every kind on the Grand Bank & on all other Banks of Newfoundland; is expressly recognized by the Crown of England, and then it is further declared "also in the Gulf of St. Lawrence and at all other places in the sea, where the inhabitants of both countries used at any time heretofore to fish."

This plainly is the admission of a Common right, founded on a Common origin, and standing in a Common usage.

But then the Treaty proceeds to declare, that "the inhabitants of the United States shall have *liberty* to take fish of every kind on such part of the Coast of Newfoundland as British fishermen shall use; (but not to dry or cure the same on that island) and also on the coasts, bays and creeks of all other of his Britannic Majesty's dominions in America; and that the American fishermen shall have liberty to dry and cure fish in any of the unsettled bays, harbors and creeks of Nova Scotia, Magdalen Islands and Labrador, but so long as the same shall remain unsettled; but so soon as the same or either of them shall be settled, it shall not be lawful for said fishermen to dry or cure fish at such settlement, without a previous agreement for that purpose with the inhabitants, proprietors or possessors of the ground."

23 It is admitted that this is a liberty held by the inhabitants of the United States by concession and not exempted from abrogation by war.

In Mr. Webster's view, therefore, the United States obtained access to the British coast fisheries by concession of a liberty, and not in virtue of joint property.

## EFFECT OF WAR OF 1812.

But whatever view may be taken by the Tribunal of the contention of the United States on the question of partition, if, indeed, it be thought necessary to come to any decision at all on that point, it is submitted that the position was completely changed in 1812.

Great Britain from the first declared that the liberties of fishing, and drying and curing fish, within British territories, conceded in 1783, were at an end when once the war of that year broke out. During the continuance of that war American fishermen could not resort to the British waters; and at the first meeting at Ghent on the 8th August, 1814, the British Commissioners made a formal declaration

that the British Government did not intend to grant to the United States, gratuitously, the privileges formerly granted to them by treaty, of fishing within the limits of British sovereignty, and of using the shores of the British territories for purposes connected with the fisheries.

In the course of the negotiations various proposals were made in regard to the fisheries, but Great Britain never departed from this attitude, and two days before the treaty was agreed on, the same declaration was expressly repeated by the British Commissioners. (United States Case, App., p. 256.)

In view of these facts, it can hardly be maintained that the question was left open; if by that phrase is meant that Great Britain reserved it for future discussion. Her view was that the fishing rights were at an end; she was in exclusive possession of the fisheries, and she had no more to gain by discussion. Immediately on the termination of war, the British naval officers in command in the colonial waters, took steps to prevent Americans from resuming the liberties they had enjoyed under the treaty of 1783. Ships were ordered to watch the coasts and to warn off American fishing-vessels.

24

BRITISH ACTION, 1815-18.

On the 17th June, 1815, Lord Bathurst issued instructions to the Governor of Newfoundland. (British Case, App., p. 63.) He stated that the American right of fishing within British jurisdiction was at an end, and that American fishing-vessels were to be prevented from using British territory for purposes connected with the fishery, and were to be excluded from the bays, harbours, rivers, creeks, and inlets of all His Majesty's possessions.

He made an exception as a matter of indulgence, for the season which had then already begun, in the case of fishermen of the United States who, through ignorance of the circumstances which affected the question, had already commenced a fishery similar to that carried on by them previous to the late war, and had occupied their former establishments, which could not be suddenly abandoned without considerable loss. These fishermen, however, were to be informed of the real state of affairs, and it was to be made clear to them that they were not in any future season to expect a continuance of the same indulgence.

The action of the naval commanders was the subject of complaint by Mr. Monroe to Mr. Baker, the British representative at Washington. The interview is recorded in a despatch from Mr. Baker to Lord Castlereagh, dated the 19th July, 1815, in the following passage (App., p. 174):

He then proceeded to observe that he had a complaint to make respecting the interruption which had been given to several American

vessels fishing off the coast of British North American Provinces, which had been ordered away by one of His Majesty's ships of war, and warned by a notice endorsed on their papers not to return. This he said was a violation of a clear right which the United States possessed under the Treaty of 1783, and which the American Government conceived to be still in force, owing to the peculiar character of that Treaty.

In my answer I reminded him of the firm and decided language which had been held by Great Britain throughout the negotiations at Ghent with respect to the supposed continuance of the right of the United States to catch and dry fish within His Majesty's jurisdiction in North America; that this privilege had been distinctly and repeatedly stated to the American Commissioners to have been purely of a conventional nature, to have therefore ceased on the war; and that as it had not been renewed by the late Treaty of Peace, it could not be considered at present in existence. I remarked that the doctrine which had been advanced by the American Commissioners was  
 25 judged equally novel and extraordinary, and that no satisfactory reasons had ever been adduced in support of it.

Mr. Monroe did not press the subject further, and led me to expect that he would make a written communication respecting it, . . .

I received this morning the note respecting the interruption to the fishery, a copy of which is enclosed. It does not, it will be perceived embrace the wide subject of the alleged right, as I had reason to believe would have been the case from what had passed, but is confined to much narrower ground. It states the instance of one vessel fishing in longitude  $65^{\circ} 20'$ , latitude  $42^{\circ} 41'$ , and said to have been distant about 45 miles from Cape Sable, which was ordered away by His Majesty's brig *Jaseur*, as well as the other American vessels in sight, and warned by an endorsement on her papers not to come within sixty miles of the coast. Mr. Monroe states this measure to be altogether incompatible with the rights of the United States, and therefore presumes it has not been authorized by His Majesty's Government. Both the distances mentioned it will be observed, are without His Majesty's maritime jurisdiction.

The particular action of the "*Jaseur*" of which complaint was made could not be justified. Great Britain did not claim to have exclusive rights on the high seas.

The matter was then taken up by Mr. Adams in London, and in his letter of the 25th September, 1815, to Lord Bathurst (British Case, App., p. 66) he first set out the argument on which he relied to establish the claim of the United States as of right, and in the concluding paragraph advanced some considerations of another kind to show the expediency of making a concession.

Lord Bathurst, in reply (British Case, App., p. 69), rejected the claim in most absolute terms so far as it was made as of right, but stated, in a passage which has been cited in the United States Case (p. 33), that Great Britain was willing to make some concession in view of the considerations of hardship and expediency which had been urged by Mr. Adams.

It is from this point that the negotiations commenced which terminated in the treaty of 1818. The matter does not appear to be of importance, but the statement in the United States Case (p. 22) that "Great Britain made overtures to the United States for a new treaty arrangement" is not established by the documents to which attention has been called. Great Britain was in possession of the fisheries, and was exercising the right, she claimed, to exclude American  
26 fishermen from them. The request for an alteration of that position necessarily came from the United States.

During the greater part of the season of 1816 American fishing-vessels were prevented from fishing within British waters, but when Mr. Bagot took up the negotiations at Washington the instructions were for the time relaxed in order to prevent any occurrence which might disturb the harmony of the two States pending the discussion. (App., p. 175.)

In the early part of 1817 it appeared that no agreement was likely to be reached, and Mr. Bagot was instructed to inform the Government of the United States that (App., p. 176)—

the orders for the exclusion of American fishermen from our territorial jurisdiction in North America and Newfoundland are in full force, and will continue to be acted on.

Mr. Adams, however, appealed to the Secretary of State in London (United States Case, App., p. 294), and the strict enforcement of the orders referred to was modified during that season. But pending the receipt of those orders seizures had already been made by His Majesty's ship "Dee." (British Case, App., p. 79.)

In 1818 the negotiations in London were commenced, and the orders were again modified for the time.

Great Britain throughout these discussions contended that the fishing liberties were at an end when war broke out in 1812; she declared, before peace was made, that she would not allow those liberties to be exercised in the future except on her own terms and subject to her own conditions; she was in exclusive possession of the territories and waters to which the liberties related; and on the restoration of peace she insisted on that exclusive possession until a new, and more limited concession, was granted in 1818.

#### COMPARISON OF CONCESSIONS OF 1783 AND 1818.

The Case of the United States (p. 60) contains the following passage in reference to the treaty of 1818:—

It is evident, therefore, that the liberties referred to in the introductory clause of the new article were the liberties claimed by the United States under the second clause of Article III of the treaty of 1783, and it will further appear from an examination of the negotiations and of the stipulations of the new article that, so far as

27 it reserves liberties in these fisheries to the inhabitants of the United States, the liberties so reserved were intended to be the identical liberties to which the American fishermen were previously entitled under the second clause of Article III of the treaty of 1783.

Referring to the negotiations which preceded the treaty of 1818, the United States Case (p. 61) says:—

The question of the extent of the coasts on which such liberties were to be reserved was the subject of discussion in the negotiations, but it was settled beyond the possibility of question that the fishing rights to be exercised on such coasts were to be the same as those exercised on the same coasts under the provisions of the treaty of 1783.

In reply it may be said that it cannot be possible that the liberties of the treaty of 1818 “were intended to be the identical liberties” of the treaty of 1783, for some of the liberties of the latter treaty were entirely new:—

1. The treaty of 1783 gave liberty to take fish—

on such part of the coast of Newfoundland as British fishermen shall use;

whereas the treaty of 1818 gave liberty to fish on certain specified parts of the Newfoundland coast, whether British fishermen used them or not.

2. The treaty of 1783, in giving liberty to fish on the coast of Newfoundland, expressly said, “but not to dry or cure the same on that island;” whereas the treaty of 1818 gave liberty to dry and cure fish on part of the southern coast of that island.

The lack of continuity between the two treaties appears, moreover, in the specific and persistent refusal of the British Government to recognise the existence of the earlier treaty when negotiating the later. Down to the very last, the United States endeavoured to move Great Britain from this attitude. In the draft of the article for the new treaty the United States Commissioners proposed that the language to be employed should indicate continuity. (United States Case, App., p. 310.)

It is agreed . . . . that the inhabitants of the said United States shall continue to enjoy unmolested, &c.

But the British Commissioners declined to assent, and the language of the treaty is—

It is agreed . . . . that the inhabitants of the said United States shall have, &c.

28 Perusal of the correspondence between Lord Bathurst and Mr. Adams during the negotiations will show:—

(1.) That Mr. Adams urged the continued existence of the liberties of the 1783 treaty, and that Lord Bathurst explicitly refused to concur in that view, or to concede anything in deference to it.



(2.) That Mr. Adams made appeal to those—

principles of benevolence and humanity which it is the highest glory of a great and powerful nation to respect. (British Case, App., p. 68.)

And also to those (British Case, App., p. 69.)—

advantages to other British interests, namely, the supplying to American fishermen of “the means of remittance and payment for the productions of British industry and ingenuity,” and, “pouring into her lap a great portion of the profits of their hardy and laborious industry.”

And that, moved by these appeals, Lord Bathurst gave way, saying that Great Britain was (British Case, App., p. 71.)—

by no means insensible to some of those considerations with which the letter of the American Minister concludes.

It is submitted, therefore, that the liberties of the treaty of 1818 were not, and could not have been intended to be, the “identical liberties” which had been granted by the treaty of 1783.

It is clear from the records that the treaty of 1818 was not a recognition of rights, which the fishermen of the United States possessed as subjects of the Crown before the declaration of independence. That contention had been expressly put forward, and had been expressly rejected. It is impossible to hold that Great Britain entered into a contract on a basis which she had repudiated on every occasion on which it had been set up. Whatever may have been the case in 1782, and on that His Majesty’s Government have already submitted their observations, the treaty of 1818 was a new arrangement. It must stand by itself and be construed according to the terms in which it is framed.

#### British Statute of 1819.

29 The United States Case, as an argument against the existence of the British right of regulation of the coast-fisheries, refers to the British statute of 1819, passed shortly after the date of the treaty, and argues that that enactment was intended (United States Case, p. 72.)—

to authorize the adoption of regulations for the purpose of preventing interference by British subjects with the fishing liberties which were secured to the American fishermen by the treaty and which had been denied them since the War of 1812.

This interpretation of the meaning of the act is confirmed by the action of the British Government in giving it practical application, and an examination of the regulations adopted by orders in council under this section of the act will show that in every instance such regulations have applied to British subjects and not to American fishermen and that this section of the act has never been interpreted in such orders as authorizing the imposition of regulations upon American fishermen.

The statute cannot be limited as suggested: for the regulations which are authorised are not such as might be necessary to prevent British subjects interfering with American citizens, but (British Case, App., p. 565).—

for the carrying into effect the purposes of the said convention, with relation to the taking, drying and curing of fish by inhabitants of the United States of *America*, in common with *British* subjects.

In support of the United States contention is cited the British Order-in-Council of the 19th June, 1819, issued in pursuance of the statute. By the Order-in-Council the Governor of Newfoundland was directed to (British Case, App., p. 566)—

give notice to all His Majesty's subjects being in or resorting to the said ports, that they are not to interrupt in any manner the aforesaid fishery so as aforesaid allowed to be carried on by the inhabitants of the said United States in common with His Majesty's subjects.

This Order-in-Council, it is argued, shows (United States Case, p. 73)—

that, in the opinion of those who were responsible for making the treaty and were thoroughly familiar with its purpose and meaning, the appropriate regulations to be adopted for giving effect to the fishing liberty which the American fishermen had in common with British subjects under the treaty, were regulations requiring British subjects "not to interrupt in any manner the aforesaid fishery so as aforesaid allowed to be carried on by the inhabitants of the said United States."

This argument overlooks the fact that the Order-in-Council was not one creative of regulations at all, but one of instructions to the Governor of Newfoundland requiring him to conform his  
30 actions to the treaty, and to give notice to others to do the like. The statute conferred two powers on His Majesty in Council:—

- 1: To make such regulations, &c.  
and
2. To give such directions, orders and instructions to the Governor of *Newfoundland*, &c.

It was in pursuance of the second of these provisions, and not of the first, that the Order-in-Council was issued.

In further support of the United States contention, the British Order-in-Council of the 9th September, 1907, is referred to, accompanied by the remark that (United States Case, p. 74)—

It is, therefore, of interest in this connection to find that here again, as before, the regulations made by this Order-in-Council applied to British subjects and not to American fishermen, and were designed to prevent British subjects from interfering with American fishermen, and that the authority for adopting such regulations was stated by the terms of the order to be the Act of June 14, 1819.

The first clause of the Order-in-Council is as follows (United States Case, p. 74) :—

No provisions, rules, or enactments which may be in force with regard to the boarding and bringing into port of foreign fishing vessels found in the waters of Newfoundland shall, within the limits prescribed by the said Convention of 1818, apply to vessels in which inhabitants of the United States of America resort to the waters of Newfoundland for the purpose of exercising the liberty assured to them by Article I. of the said Convention.

This clause was directed against section 1 of the Newfoundland statute of 1905 (British Case, App., p. 757). The *modus vivendi* of 1906 had provided that that clause should “not be regarded as applying to the United States,” and the Order-in-Council, in pursuance of the *modus*, so declared (British Case, App., p. 503). The fact, therefore, that the Order-in-Council afforded relief to American fishermen renders no support to the contention that the enactment of 1819 did not authorise the adoption of fishing regulations applicable to American as well as to British fishermen. For if it be true that the effect of the first clause of the Order-in-Council was—designed to prevent British subjects from interfering with American fishermen,

the interference which was being relieved against had been authorised by a Newfoundland statute to which His Majesty had  
31 given assent. The position, therefore, is that by the Newfoundland statute the British interpretation of the treaty had been upheld—the right to regulate all fishermen in British waters had been asserted—and, in pursuance of a *modus vivendi*, the operation of the statute was cancelled. It is difficult to see in this any admission of the validity of the United States contention.

To understand the second clause of the Order-in-Council, it must be remembered that Newfoundland had adopted legislation prohibiting, except under special licence, any dealing with bait-fishes for the purpose of exportation (50 Vict., c. 1; 51 Vict., c. 9; 52 Vict., c. 6; Can. Stat. 1892, c. 129; 56 Vict., c. 6; British Case, App., pp. 711, 712, 713, 727, 730). Newfoundland had also passed a statute (5 Ed. VII, c. 4; British Case, App., p. 757), under which foreign fishing vessels were prohibited from purchasing bait-fishes within Newfoundland waters; and section 3 of that statute had provided that (British Case, App., p. 757)—

“In any prosecution under this Act, the presence on board any foreign fishing vessel in any port of this Island, or within British waters aforesaid, of any caplin, squid, or other bait fishes, of ice, lines, seines, or other outfit or supplies for the fishery, shall be *prima facie* evidence of the purchase of the said bait fishes and supplies and outfits within such port or waters.”

In pursuance of the *modus vivendi*, the second clause of the Order-in-Council of 1907 provided as follows (United States Case, p. 75) :—

“II. If any question should arise before any Magistrate, Justice of the Peace, Judge or Court in Newfoundland, in relation to, concerning, or in anywise in respect of the presence on board any such vessel of any caplin, squid, or other bait fishes, or of ice, lines, seines, or other outfit of supplies for the fishery, the burden of proof that the said bait fishes and supplies and outfits have been purchased within the waters of Newfoundland shall rest upon the person or persons alleging the same.”

So far from this clause having been designed—

“to prevent British subjects from interfering with American fishermen”

its purpose was merely to change the onus of proof in case of prosecutions of American fishermen for disobedience to Newfoundland statutes regulative of their conduct. The Order-in-Council recognised the validity of interference with American fishermen, but modified the procedure.

The third clause of the Order-in-Council of 1907 provided  
32 that no legal proceedings should be served upon certain American vessels, and that such vessels should not be seized—

“without the consent of His Majesty’s Senior Naval Officer of the Newfoundland station.”

This clause also, therefore, recognised the amenability of American fishermen to British regulations.

Indeed the Order-in-Council of 1907 was altogether opposed to the contention of the United States. It expressly recognized that the Colonial Act applied to American fishermen. And it was because the Colonial Act did so apply that the Order-in-Council was made. It was decided to modify for a time the enforcement of a Newfoundland Act, in order to give effect to the *modus vivendi* which had been agreed to by the two nations, and it was thought convenient to do that by Order-in-Council. The enforcement of the Act was not, however, prohibited. It was limited in certain respects, and in other respects was made subject to conditions; except for those limitations and conditions the Act remained in force.

#### ARGUMENT.

It is submitted that the following points are clear :—

1. The United States argument as to the interpretation of the treaty is too indirect. It points to the very limited nature of the Order-in-Council which directed the colonial authorities to give notice not to interrupt United States fishermen when exercising their treaty privileges. From that, it argues the meaning of the British statute, by assuming that the statute authorised nothing but what

was done under it. And having thus reduced the statute to the limits of the Order-in-Council, it argues that the treaty must, for like reasons, be reduced to the limits of the statute.

2. Acceptance of such method of argument would lead to the conclusion, not, as the United States Case puts it, that the statute—"was intended to authorize the adoption of regulations for the purpose of preventing interference" with United States citizens; but that the statute was intended to authorise a notice to be sent to the Colonial authorities advising them of the treaty and telling them to conform to it.

3. The statute authorised both the making of regulations, and the giving of the notice. The Order-in-Council of 1819 made no  
33 regulations; but the power to make them nevertheless remained and still remains.

4. The United States Case says that the (United States Case, p. 72)—

"section of the act has never been interpreted in such orders as authorizing the imposition of regulations upon American fishermen."

The "every instance" of making regulations consists (so far as cited by the United States Case) of the Orders-in-Council of 1819 and 1907 above alluded to. But the Case omits to mention the regulations of the Newfoundland statutes to which it is objecting, which were passed prior to 1907; and which the Order-in-Council of 1907 merely mitigated. And it omits to mention that for more than twenty years United States fishermen have conformed to the colonial regulations requiring them to take out licences prior to purchasing bait or transshipping fish, &c., in British territory.

#### JOINT REGULATIONS.

The United States Case calls attention to the various occasions upon which the British Government invited the co-operation of the United States in framing regulations for the coast-fisheries. A short reference to these occasions will show, not only that the British Government has been willing to consult with the United States upon a subject which is of great moment to the inhabitants of both countries, but has urged consultation upon the United States while, at the same time, always reserving its own sovereign rights.

Prior to the treaty of 1818, at the time when Lord Bathurst was evincing a disposition to make some concession to United States fishermen in view of the hardship caused to them by the loss of the fishing privileges, his Lordship observed to Mr. Adams that he hoped that the United States might be induced (United States Case, p. 34)—

"amicably and cordially, to co-operate with His Majesty's Government in devising such regulations as shall prevent the recurrence of similar inconveniences,"

—the “inconveniences” being the pre-occupation of British harbours, the exclusion of British vessels from places “where the fishery might be most advantageously conducted,” and the “clandestine introduction of prohibited goods into the British colonies.”

To this proposal the United States expressed its assent (Adams to Bathurst, 22nd January, 1816), Mr. Adams at the same time conceding that (United States Case, p. 30)—

“the jurisdiction over the shores washed by the waters where this fishery was placed was reserved to Great Britain,”

Again in 1866, the United States proposed (amongst other things) to appoint a commission (United States Case, p. 136)—

“To agree upon and establish such regulations as may be necessary and proper to secure to the fishermen of the United States the privilege of entering bays and harbours for the purpose of shelter and of repairing damages therein, of purchasing wood, and of obtaining water, and to agree upon and establish such restrictions as may be necessary to prevent the abuse of the privilege reserved by said convention to the fishermen of the United States.”

The British Government agreed to the proposal, but stipulated that (United States Case, p. 137)—

“Her Majesty’s Government would hold themselves entitled to maintain, pending the determination of the questions to be discussed, the principle for which they have heretofore contended, and to enforce all regulations and assert all rights which previously to the conclusions of the Reciprocity Treaty, the British Government asserted and enforced.”

The commission was never proceeded with.

In 1879, during the existence of the treaty of 1871, Mr. Evarts (United States Secretary of State) wrote to Mr. Welsh (United States Minister at London) for communication to the British Government (United States Case, p. 177):—

“While the differing interests and methods of the shore fishery and the vessel fishery make it impossible that the regulation of the one should be entirely given to the other, yet if the mutual obligations of the treaty of 1871 are to be maintained, the United States Government would gladly co-operate with the Government of Her Britannic Majesty in any effort to make those regulations a matter of reciprocal convenience and right, a means of preserving the fisheries at their highest point of production, and of conciliating a community of interests by a just proportion of advantages and profits.”

In reply, Lord Granville (27th October, 1880), after quoting the above paragraph, proceeded as follows (United States Case, pp. 177–8):—

“Her Majesty’s Government do not interpret these expressions in any sense derogatory to the sovereign authority of Great Britain in the territorial waters of Newfoundland, by which only regulations having the force of law within those waters can be made. So regard-

ing the proposal, they are pleased not only to recognise in it an indication that the desire of Her Majesty's Government to arrive at a friendly and speedy settlement of this question is fully reciprocated by the Government of the United States, but also to discern in it the basis of a practical settlement of the difficulty, and I have the honour to request that you will inform Mr. Evarts that Her Majesty's Government, with a view to avoiding further discussion and future misunderstandings, are quite willing to confer with the Government of the United States respecting the establishment of regulations under which the subjects of both parties to the treaty of Washington shall have the full and equal enjoyment of any fishery which, under that treaty, is to be used in common. The duty of enacting and enforcing such regulations, when agreed upon, would of course rest with the power having the sovereignty of the shore and waters in each case."

The matter was revived by the British Minister at Washington in a letter (3rd May, 1882), to Mr. Frelinghuysen (United States Secretary of State) as follows (United States Case, p. 179) :—

"With reference to correspondence which has passed between Her Majesty's Legation and the State Department respecting the Newfoundland Fisheries question, it is sought to determine what Regulations it would be expedient to enforce for the protection of the fisheries, and to this end attention is called to the following Acts, viz., Cap: 102 Consolidated Statutes Newfoundland,

" 38 Vict: Cap: 7	
" 39 " "	6
" 40 " "	13
" 42 " "	2

"which Documents were appended to the message from President Hayes to the House of Representatives. The United States Government is invited to examine these Statutes, and to state whether they find in them anything open to objection or have any suggestions to make with regard to them.

"Any Communication which the United States Government may make upon this subject will receive careful consideration on the part of Her Majesty, and when an agreement has been arrived at as to the regulations which should govern the fisheries, the Legislature of Newfoundland will be invited to make the necessary changes in the law if any such should be found to be necessary."

In answer to this letter, the United States presented a memorandum (9th May, 1882) which was confined to a criticism of the colonial statutes.

36 In reply, Lord Granville wrote to Mr. West as follows (United States Case, p. 183) :—

"I have to acknowledge the receipt of your despatch of the 9th May last, transmitting a Memo. drawn up by the State Dept. of the U. S. Government upon certain Acts of the Legislature of Newfoundland for the regulation of the fisheries on the waters of that Colony.

"This Memo was communicated to you by Mr. Frelinghuysen in answer to the request of Her Majesty's Government to be favoured with any suggestions which the United States Government might be

prepared to offer with a view to the friendly consideration by the two Governments of such amendments of the Fishery Regulations as might be reasonably called for in the interests of both countries.

"Her Majesty's Government regrets to find that the Memo. contains no suggestion of any kind tending to that object, but that it reopens a discussion on the construction of the Treaty of Washington which it was hoped had been exhausted in the previous correspondence."

No reply was ever made to this letter, although on the 9th October, 1883, a reply was requested (United States Case, pp. 184-5).

#### CONCLUSION.

The foregoing observations are presented to the Tribunal by way of reply to the points raised in the Case of the United States; but His Majesty's Government contends that, whatever view may ultimately prevail on those points, this question must be primarily determined by the language of the treaty itself. There is nothing in the treaty of 1818 to derogate from the sovereignty of Great Britain over the shores and waters in question, or to restrict her right to regulate the action of all persons coming there. And as to the fisheries, the treaty expressly states that the liberty of fishing is to be enjoyed by Americans "in common" with British subjects; a condition which, if it is to have any meaning at all, must mean that Americans are to enjoy the same rights as British subjects, but no more. The argument on this and the other material points has already been presented in the British Case.



**QUESTION TWO.****AMERICAN FISHERMEN.**

The Case of the United States makes no reference to this question, and adduces no arguments bearing upon it. It is, for this reason, not proposed to add anything in this Counter-Case to what has already been said in the Case on behalf of His Majesty's Government.



## QUESTIONS THREE AND FOUR.

## CUSTOMS ENTRIES, AND LIGHT AND HARBOUR DUES.

The British Case outlines the course of British and colonial legislation regarding customs entries and light dues before and during the periods covered by the treaties of 1783 and 1818. It was there contended that such legislation was reasonably incidental to laws admitting vessels into a nation's coast waters, that it did not partake of the nature of exclusion, and that it was not in any sense inconsistent with the treaty.

## LIGHT DUES.

The United States Case contains no statement of the grounds upon which the contention is made that it is inconsistent with the treaty to exact payment of light dues, except such as may be gathered from the diplomatic correspondence which commenced in 1905, extracts from which are quoted in the Case. That correspondence having been fully considered in the British Case, it will not be again discussed in this Counter-Case. While the United States at that time denied the British right, these dues were still paid under the *modus vivendi* then entered into, so that the practice theretofore existing was not altered.

## CUSTOMS ON NON-TREATY COASTS.

With reference to customs entries and harbour dues on non-treaty coasts, the United States Case, after referring to certain diplomatic correspondence that followed upon several seizures or threatened seizures in 1886 and 1887, proceeds as follows (United States Case, p. 197) :—

It appears, therefore, that no objection was raised by the United States to the imposition of harbor dues or the requirement of customs entry in the case of American vessels permitted to enjoy commercial privileges on these coasts, and that the objection on the part of the United States was directed particularly to the imposition of such conditions and exactions upon American fishing vessels exercising their treaty right of entering the bays and harbors on these coasts for the purposes specified in the treaty, when at the same time such vessels were not permitted to enjoy commercial privileges.

References are made to interferences with the *Rattler*, the  
 40 *Julia Ellen*, and the *Shiloh* to illustrate the attitude then taken  
 by the United States. But a perusal of the whole correspondence will establish that, although these vessels were refused commercial privileges, the objections made by the United States were to the manner in which the Customs Laws were enforced and to the alleged violent and hostile conduct of certain Canadian officers, rather than to the validity of the Canadian Customs Acts as applied to American fishermen.

For instance, the letter from Mr. Bayard, the United States Secretary of State, of the 9th August, 1886, from which an extract is given in the American Case, closes with the following request (United States Case, App., p. 824) :—

In the interests of amity, I ask that this misconduct may be properly rebuked by the Government of Her Majesty.  
 and Mr. Bayard's subsequent letter to Sir L. West of the 18th August, 1886, referring to all these cases (*Rattler*, *Julia Ellen*, and *Shiloh*), says (United States Case, App., p. 830) :—

Such conduct cannot be defended on any just ground, and I draw your attention to it in order that Her Britannic Majesty's Government may reprimand Captain Quigley for his unwarranted and rude act.

The unwarranted and rude act referred to was that which is mentioned in the last paragraph of the letter :—

The firing of a gun across their bows was a most unusual and wholly uncalled for exhibition of hostility, and equally so was the placing of armed men on board the peaceful and lawful craft of a friendly nation.

The correspondence regarding the *David J. Adams* is also significant as showing the attitude of the United States. In his letter of the 26th January, 1887, to the Marquis of Salisbury, Mr. Phelps (United States Ambassador at London) said (United States Case, App., p. 900) :—

"And quite aside from any question arising upon construction of the treaty, the provisions of the custom-house acts and regulations have been systematically enforced against American ships for alleged petty and technical violations of legal requirements in a manner so unreasonable, unfriendly, and unjust as to render the privileges accorded by the treaty practically nugatory.

"It is not for a moment contended by the United States Government that American vessels should be exempt from those reasonable port or custom-house regulations which are in force in countries  
 41 which such vessels have occasion to visit. If they choose to  
 violate such requirements their Government will not attempt  
 to screen them from the just legal consequences.

"But what the United States Government complain of in these cases is that existing regulations have been construed with a technical strictness, and enforced with a severity in cases of inadvertent

and accidental violation where no harm was done, which is both unusual and unnecessary, whereby the voyages of vessels have been broken up and heavy penalties incurred. That the liberal and reasonable construction of these laws that had prevailed for many years, and to which the fishermen had become accustomed, was changed without any notice given. And that every opportunity of unnecessary interference with the American fishing vessels, to the prejudice and destruction of their business, has been availed of. Whether in any of these cases, a technical violation of some requirement of law had, upon close and severe construction, taken place, it is not easy to determine. But if such rules were generally enforced in such a manner in the ports of the world, no vessel could sail in safety without carrying a solicitor versed in the intricacies of revenue and port regulations.

"It is unnecessary to specify the various cases referred to, as the facts in many of them have been already laid before Her Majesty's Government."

The United States did not demand, and it certainly was not agreed, that American fishermen should be relieved from observing the requirements of the Canadian Customs Laws.

#### CUSTOMS ON TREATY COASTS.

With reference to customs entries and harbour dues on treaty coasts, the United States Case contains no statement of the grounds upon which it is contended that such exactions are in violation of the treaty, except so far as they can be gathered from the correspondence of 1905, to which reference has already been made.

It is therefore not deemed necessary to add anything on this point to what has been said in the Case delivered on behalf of His Majesty's Government.



## QUESTION FIVE.

## BAYS.

The contention of His Majesty's Government is that the treaty of 1818 applies to all bays, and that the 3-mile limit must be measured from a line drawn across the mouths of all bays on the non-treaty coasts. The argument by which this contention is supported has been stated in the British Case.

The contention of the Government of the United States (p. 248), on the other hand, is that the 3-mile limit must be measured from low water mark following the indentations of the coast of each bay. In the proceedings before the Halifax Commission in 1877 the assertion of the United States was different. It was then contended that the 3 miles ought to be measured from the shore only in cases of bays which exceeded (British Case, App., p. 256)—

“six miles in width at the mouth upon a straight line measured from headland to headland,”

and the same ground was taken in the Report of the Committee of the Senate on Foreign Affairs in 1888. This argument has been discussed in the British Case, and the observations which are now presented to the Tribunal will be supplementary to the arguments presented in the British Case and directed more particularly to the new and different case now put forward on behalf of the United States.

## PRELIMINARY.

At the outset His Majesty's Government submits that this question must be decided according to the language of the treaty. That language is clear and unambiguous. It provides that American fishermen shall not fish within 3 miles of any of the bays of His Britannic Majesty's dominions in America. There is no qualification of any kind in regard to bays, and the necessary conclusion is that the treaty meant what it said and applied to all those tracts of water on the British American coasts which were known as bays at the date of the treaty. The plain language of a treaty cannot be defeated by conjectures as to the possible intention of the negotiators of one of the parties, nor by the diplomatic representations of a later date.

His Majesty's Government desire to enter a protest against the suggestion that any inference adverse to Great Britain can be drawn from the fact that she has not invariably enforced to the fullest extent the construction for which she now contends. The fact is that Great Britain has always exhibited the greatest leniency towards United States fishermen. The controversy on the point of bays arose between the years 1837 and 1841, and Great Britain has ever since consistently adhered to the view of the construction of the treaty which was then assumed and is now put forward. At times when negotiations have been in progress, and the history of the case shows they have not been infrequent, or at times when the relations between the two countries have unhappily been strained and other and wider issues have been at stake, Great Britain has been willing to make some temporary concession in order to avoid the possibility of friction. But she has invariably coupled with these concessions a declaration of her full claim. If it were to be laid down by the Tribunal that concessions made in this way, and for these reasons, could be used as arguments against the nation which made them, the arrangement of many international differences would become impossible. No nation would then be able to forego even temporarily the enforcement of her strict rights without exposing herself to the risk of losing those rights for ever.

#### CONSTRUCTION OF THE TREATY.

It has been pointed out in the British Case that the only meaning which can give effect to all the clauses of Article I of the treaty is that for which His Majesty's Government contend.

The construction now proposed in the Case of the United States is open to the insuperable objection that it gives no meaning whatever to the words "bays, creeks, or harbours" in the clause. By the treaty, the United States renounced—

any liberty heretofore enjoyed or claimed by the inhabitants thereof to take, dry, or cure fish on or within three marine miles of any of the coasts, bays, creeks, or harbors of His Britannic Majesty's Dominions in America, not included within the above mentioned limits.

45 It will be observed that the interpretation of the United States would necessitate the omission from this language of the words "bays, creeks or harbors;" and would require the three miles to be measured not from the bays, the creeks, and the harbours, but from the coast-line of those indentations.

Clearly if the language of the treaty were expanded so as to make the distance prescribed directly applicable to each of the places mentioned, it would read thus—

"three marine miles of any of the coasts; three marine miles of any of the bays; three marine miles of any of the creeks; or three marine miles of any of the harbors."



The interpretation of the United States would require it to be read as follows:—

“Three marine miles of any of the coasts; three marine miles of any of the coasts of the bays; three marine miles of any of the coasts of the creeks; or three marine miles of any of the coasts of the harbors.”

INTENTION OF THE NEGOTIATORS.

The Case of the United States lays stress upon what it terms the intention of the negotiators of the treaty to allow fishing by American fishermen in any waters not within 3 miles of the British coasts. It is submitted in the first place on behalf of His Majesty's Government that, even if there were any circumstances from which such an intention could be inferred, they cannot be used to affect the construction of the treaty into which the two Governments ultimately entered. That treaty must be taken to represent what the parties to it intended, and it must be construed in accordance with the plain meaning of the words like any other written document. But it is further submitted that the attempt to show that there was any such intention on the part of the negotiators has wholly failed.

The suggestion finds no support in the records of the time, and is, as His Majesty's Government believe, wholly unwarranted (British Case, App., p. 71). There were two distinct fisheries: the first, the fishery in the high seas, which was agreed by both sides to be open to the fishermen of all nations; the second, the fishery in the waters on the British coasts and in the bays on those coasts which had  
46 been granted in 1783, but had been terminated, as Great Britain asserted and as the United States denied, in 1812. The dispute in 1818 related only to the fishery in these waters. It was ended by the grant to the Americans of a fishery on certain portions of the British coast only. Off the other portions of the British coasts Americans had no special rights of any kind.

STATEMENT OF MR. RUSH.

His Majesty's Government are unable to accept the recollections of Mr. Rush, written thirty-five years later, at a time when controversy had arisen on the point, unsupported as they are by any record made at the time. Mr. Rush's argument is founded on the assumption that it was unlikely the American negotiators would have surrendered any claim over waters to which, before the war of 1812, their fishermen had a right to go. This assumption is of course mistaken. The United States negotiators were expressly authorised by their instructions to give up the liberty of fishing “within the British jurisdiction generally” upon condition that it should be secured as a permanent right on certain specified parts of the British coasts

(British Case App., p. 84). They acted in accordance with these instructions, and the treaty specifies the limits within which alone they have a right of fishing. Indeed in a later part of his letter Mr. Rush admits the principle for which Great Britain contends: namely, that the three miles must be measured from the entrance to the bay rather than from the shore of the bay, and he thus leaves the question not one between headlands and no headlands, but one merely as to the cases in which lines between headlands ought, and those in which they ought not, to be drawn. That is a very substantial admission. It is quite inconsistent with the United States interpretation of the treaty, which Mr. Rush is supposed to have approved.

#### USER PRIOR TO 1836.

In the Case of the United States Government (p. 76) it is claimed that Great Britain did not dispute the right freely asserted and exercised at that time (that is, between 1818 and 1836) by the American fishermen of fishing in any of the bays along the coast referred to, provided that such fishery was not carried on within three marine miles of the shore.

His Majesty's Government do certainly dispute the fact  
47 that American fishermen freely asserted or exercised the right to fish in bays before 1836, and they refer to the documents in the appendix to show that there was little, if any, fishing in the bays before that time. The importance of the fisheries in the colonial bays grew up about 1836, when the mackerel for some reason ceased to frequent the American shores. The effect was to deprive the American mackerel fishers of their trade and to drive them to the colonial waters where mackerel were in abundance.

These facts are clearly stated by Representative Tuck, in his speech in Congress to which reference has already been made. It will be convenient to cite again a passage from that speech (British Case, p. 97):—

I do not think it generally known that the whole difficulty about the fisheries is about our right to take mackerel. The cod fishing privileges are adequate already. . . .

In 1818 we took no mackerel on the coasts of the British possessions, and there was no reason to anticipate that we should ever have occasion to do so. Mackerel were then found as abundantly on the coast of New England as anywhere in the World, and it was not till years after this that this beautiful fish, in a great degree, left our waters. The mackerel on the provincial coasts has principally grown up since 1838, and no vessel was ever licensed for that business in the United States since 1838. The Commissioners of 1818 had no other business but to protect the cod fishery; and this they did in a manner generally satisfactory to those most interested.

This shows clearly that the fisheries pursued by American fishermen before 1836 were the cod fisheries on the high seas, and that so far from freely asserting and exercising the right of fishing in the bays, they did not, until after 1836, frequent the bays for any such purpose.

Mr. Dana, speaking on behalf of the United States before the Halifax Commission, made a statement to the same effect (App., p. 188) :—

Your Honours will also observe that until 1830 the mackerel fisheries were unknown. There was no fishery but the cod fishery. The cod fisheries were all the parties had in mind in making the Treaty of 1818,

And later, speaking of the period between 1818 and 1854, he says :—

Great changes took place in that time. The mackerel fishery rose into importance. Your honours have had before you the interesting spectacle of an old man who thinks that he was the first man who went from Massachusetts into this Gulf and fished 48 for mackerel, in 1827, or thereabouts. He probably was. But mackerel fishing did not become a trade or business until considerably after 1830, and the catch of mackerel became important to us as well as to the Colonies.

Commander Campbell, reporting to the British Admiral in 1852 on American encroachments in the Bay of Chaleurs, said (British Case, App., p. 190) :—

I hear from the people of the country that for years after the Treaty of 1818, was ratified, the Americans never did attempt to fish in any part of Chaleur Bay, and that they have only done so within the last 12 or 15 years—or since the mackerel fishery has been followed by them with so much advantage—The obvious inference then is that it was not till long after the Treaty of 1818 was concluded, that the fishing in the Bay of Chaleur was valued by them, consequently no exception, as regards the word “bays,” seems to have been thought of and none would ever have been thought of had not the lucrative mackerel fishery become known.

The fact that the fishery in the bays only became important when Americans began to pursue the shoals of mackerel into colonial waters, explains the date at which the controversy first commenced. Until 1836 no question had arisen. If Americans fished in the bays, they did so in small numbers; the matter was of no importance, and no dispute arose.

Mr. Stevenson (British Case, App., p. 125), United States Secretary of State, in 1841 did, indeed, suggest that there had been a uniform practice in the matter, but no evidence is given in support of that statement, nor of any user known to the British authorities. And Lord Falkland, the Governor of Nova Scotia, expressly denied the suggestion. He said (British Case, App., p. 128) :—

“Indeed the claim now set up there is reason to think is *new*, as in point of *practice* the American fishermen when questioned for be-

ing in the waters of this province, have uniformly resorted to the pretexts afforded by the Convention, viz.: the want of shelter, repairs or wood, and water, and *never* it is believed have asserted the *right* to fish within the *bays* or *harbours* of the coasts."

It is not known whether any reply was sent to Mr. Stevenson; probably it was thought unnecessary for the reason given by Lord Stanley, viz. (United States Case, App., p. 1046), that the precautions taken by the Provincial Legislature were practically acquiesced in by the Americans; but however that may be, it is certain that no further communication was at that time received from Mr. Stevenson or from the Government of the United States.

49 Mr. Everett repeated Mr. Stevenson's assertion in his letter of the 10th August, 1843 (British Case, App., p. 130), but it was again expressly denied by Lord Falkland in his despatch of the 17th October of that year (British Case, App., p. 131).

His Majesty's Government submit that the true inference from this evidence is that the American fishermen did not set up any claim to fish as of right in British bays until the mackerel fishery became of importance to them about the year 1836, and that the allegation that the British Government did not dispute this claim therefore falls to the ground.

#### BRITISH ACTION IN 1838.

On the 6th October, 1838, Lord Palmerston, British Foreign Secretary, instructed Mr. Fox, His Majesty's Minister at Washington, to inform the Government of the United States that His Majesty's Government had deemed it expedient to direct some small vessels of war to be stationed on the coasts of Nova Scotia for the protection of the fisheries. He continued (British Case, App., p. 117) :—

"The chief matter of complaint is, that American citizens in violation of the Convention of 1818, enter the gulfs, bays, harbours, creeks, narrow seas, and waters of the Colonies, and that they land on the shores of Prince Edward and the Magdalen Islands, and by force, aided by superior numbers, drive British fishermen from banks and fishing grounds solely and exclusively British. . . .

"You will observe that the points which Her Majesty's Government have to enforce are:—

"1st. That the three marine miles within which the citizens of the United States are by the Convention prohibited from fishing, must be calculated from the headlands of Nova Scotia, and not as the Americans contend, from a line curving and corresponding with the coast;"

It is clear, therefore, that Great Britain took up her position in 1838, on the first occasion when any practical question was raised in regard to bays. From that position she has never departed, and to that position she adheres to-day.

## ALLEGED NEW INTERPRETATION OF TREATY.

The United States Case (p. 98) alleges that the interpretation put upon the treaty with respect to bays by the British authorities in 1839 was new and was suggested by the provincial authorities, who had nothing to do with the negotiation of the treaty. It has already been shown that this interpretation was not new, and that all that the provincial authorities had to do with it was that when the American fishermen began to resort in considerable numbers to the bays on the North American coast they called the attention of His Majesty's Government to the fact. That the view in question was not new is demonstrated by the work of the well-known United States writer, Mr. Theodore Lyman ("Diplomacy of the United States"), already referred to. Writing in 1828 and dealing with the effect of the treaty of 1818, he said (British Case, p. 87) :—

"We have lost the Bay of Chaleurs fishing, so important formerly as to confer a name on a particular description of fish as well as vessel."

That the interpretation put upon this provision of the treaty by His Majesty's Government in 1839 was not a novelty, and was correct, is further evidenced by Mr. Everett's attitude in the correspondence in 1843-5.

## CORRESPONDENCE OF 1843-5.

The correspondence exchanged between the two Governments in 1843 is important. The United States took exception to any claim over the Bay of Fundy on the ground that it was not a "bay" except in name (United States Case, App., p. 483). Exception was also taken to any claim over waters which could be included between extreme headlands, but which were not in any sense bays, such as those contained within a line drawn from the headland of Cow Bay and Cape North on the north-eastern shores of Cape Breton, where the "Argus" was seized. But no general claim to fish anywhere more than three miles from shore was insisted upon by the United States.

The material letters have been cited in the British Case, and it is not necessary to repeat in full the extracts given there. It will be enough to point out that the British contention is stated unequivocally in the letter of Lord Aberdeen of the 15th April, 1844 (British Case, App., p. 133) :—

"It is thus clearly provided that American fishermen shall not take fish within 3 marine miles of any bay of Nova Scotia, &c. If the treaty was intended to stipulate simply that American fishermen should not take fish within three miles of the coast of Nova Scotia, &c., there was no occasion for using the word 'Bay' at all. But the proviso at the end of the article shows that the word 'Bay' was used designedly; for it is expressly stated in that proviso, that under cer-

tain circumstances the American fishermen may enter *Bays*, by which it is evidently meant that they may, under those circumstances, pass the sea-line which forms the entrance of the bay. The undersigned apprehends that this construction will be admitted by Mr. Everett."

There could be no doubt, therefore, as to the construction put on the treaty by His Majesty's Government (British Case, App., p. 134). In his reply (and it is to be observed that the terms of the reply met with the express approval of his own Government), Mr. Everett admitted that it was the intention of the treaty, and that it was itself reasonable that the 3-mile limit should be measured having—

"regard to the general line of the coast; and to consider its bays, creeks and harbors, that is, the indentations usually so accounted, as included within that line."

but he proceeded to argue that the Bay of Fundy was exceptional. This amounts to an unequivocal statement that the United States Government did at that time accept the construction that the 3-mile limit was not to be measured from low water mark, following the indentations of the coast, as they now contend.

Moreover, the Lieutenant-Governor of Nova Scotia agreed to the concession subsequently made by Great Britain relative to the Bay of Fundy, because he understood from Mr. Everett's letter that the contention of Great Britain as to bays in general was admitted. In the Governor's despatch of 17th September, 1844, the following passage occurs (British Case, App., p. 136):—

"In respect to the expediency of relaxing the strict rule which has hitherto been declared applicable to American vessels found fishing within the limits of the Bay of Fundy, I have found it difficult to arrive at a conclusion, because although some members of the Executive Council believe, with myself, that such a concession, *provided it led to no other* of a like nature, would not be productive of injury to Nova Scotia, and might in fairness be granted, other members of the board, among whom is the Attorney General, entertain a strong opinion to the contrary.

"When, however, I perceive that Mr. Everett, in his note of the 25th May, 1844, addressed to Lord Aberdeen, admits that (in estimating the distance of three miles from the shore within which American fishermen are not permitted to approach) it is 'the  
52 intent of the treaty, as it is in itself reasonable to have regard to the general line of the coast, and to consider its bays creeks and harbours, that is the indentations so accounted, as included within that line,' which I take to be an acquiescence in the opinion of Messrs. Dodson and Wilde, that the distance within which American fishermen must not approach is three miles from a line drawn from headland to headland, taking the general configuration of the coast; I cannot but conceive that a great portion of what I have contended for, (in my despatch No. 75, dated the 8th May, 1841, addressed to Lord John Russell) on the part of the province, is conceded, and it is therefore my unreserved opinion, provided always that this interpretation of Mr. Everett's phraseology be correct, that that which is

now asked by the Americans may be granted, without evil consequences, if due care be taken that no further pretensions can hereafter be founded on the concession."

Lord Aberdeen, in his letter of the 10th March, 1845, (British Case, App., p. 141) announced the relaxation which Great Britain was willing to make in regard to the Bay of Fundy; at the same time, however, re-asserting the view that the bay was "a bay within the meaning of the treaty of 1818." Mr. Everett, in reply (25th March) (British Case, App., p. 143), confined himself to asking that it should be made plain that waters such as those where the "Argus" was captured were not to be considered as "bays," a contention which His Majesty's Government did not maintain, since, in fact, the vessel was not seized within a bay or in unlawful propinquity to any bay. In his final letter of the 21st April, 1845 (British Case, App., pp. 145, 151), Lord Aberdeen expressly stated that other bays on the coast were not included in the concession made in respect of the Bay of Fundy.

#### ALLEGATION OF GREAT BRITAIN'S AGREEMENT WITH UNITED STATES.

The United States Case suggests that the opinion of the British Government could not have been materially different from that of the United States, because after the Law Officers had given their opinion (United States Case, p. 103)—

"Great Britain showed a decided inclination to avoid the effect of such opinion by proposing a relaxation of the narrow construction recommended by it, and was only prevented from so doing by vigorous protests from Nova Scotia."

It is submitted that this suggestion has no foundation whatever.

Not only was a relaxation proposed, but it was actually made  
53 by Lord Aberdeen in his letter to Mr. Everett of the 10th March, 1845, care, however, being taken to accompany it with a renewal of an assertion of right. The material portions of his despatch are set out in the British Case at p. 93, and the despatch is printed in full in the appendix to the British Case at p. 141.

There were no "vigorous protests from Nova Scotia" against this concession. On the contrary the Nova Scotia Governor concurred in it, as has been already pointed out, upon the ground that the United States had, on their part, conceded the correctness of the British view of the headland question (by Mr. Everett's letter, above quoted); and it was no doubt because of the Governor's letter of the 17th September, 1844, that the concession was made.

Afterwards (19th May, 1845) the new Colonial Secretary (Lord Stanley), not apparently appreciating the value of the bays as fish-

ing grounds, suggested to the Governors of Nova Scotia and New Brunswick a further relaxation of (British Case, App., p. 146)—

“the strict rule of exclusion exercised by Great Britain over the fishing vessels of the United States entering the bays of the sea on the British and American coasts,”

and added—

“I have to request that your Lordship would inform me whether you have any objections to offer, on provincial or other grounds, to the proposed relaxation of the construction of the Treaty of 1818 between this country and the United States.”

Nova Scotia and New Brunswick did object, and Lord Stanley wrote to the Governor of Nova Scotia (17th September, 1845) (British Case, App., pp. 148, 150, 151):—

“Her Majesty’s Government have attentively considered the representations contained in your despatches Nos. 324 and 331, of the 17th June and 2nd July, respecting the policy of granting permission to the fishermen of the United States to fish in the Bay of Chaleurs and other large bays of a similar character on the coasts of New Brunswick and Nova Scotia, and, apprehending from your statements that any such general concession would be injurious to the interests of the British North American Provinces we have abandoned the intention we had entertained upon the subject, and shall adhere to the strict letter of the Treaties, which exist between Great Britain and the United States relative to the fisheries in North America, except in so far as they may relate to the Bay of Fundy which has been thrown open to the Americans under certain restrictions.”

54 It is submitted that this correspondence most clearly shows that the British Government had no doubt whatever as to their right under the treaty, and that there is no colour for the suggestion that the proposed relaxation proceeded from any doubt as to the rights of Great Britain, or from any cause other than a desire to avoid friction.

#### OPINION OF MR. WEBSTER, 1852.

In 1852 there was considerable excitement in the United States over some naval orders that had been issued by Great Britain for the protection of the Canadian fisheries, and Mr. Webster issued the Notice which is in part set out at p. 96 of the British Case, and, in full, at p. 152 of the appendix to that Case. Mr. Webster, it is submitted, in that Notice, clearly accepted the British construction of the language of the treaty (British Case, App., p. 171). He admitted that American fishermen were precluded by the language of the treaty strictly construed from entering bays except for shelter &c., and declared that it was an oversight in the Convention of 1818 to have made so large a concession to England. In conversation with Mr. Crampton he gave it as his opinion that the Queen’s Advocate



and the British Attorney-General were undoubtedly right in the construction they had placed on the treaty (British Case, App., p. 156).

The Case of the United States attempts to explain Mr. Webster's expressions in this Notice by saying that his meaning was that the treaty did not correctly express the agreement into which the parties intended to enter, and they referred to the concluding sentence of the capital Notice in support of this view. The whole of this subject has been already discussed in the British Case at pp. 96 and 97. It is enough now to point out that the only meaning that can be put upon Mr. Webster's language is that he concurred in the British construction of the treaty, but considered that the American negotiators had entered into such a treaty by some oversight.

It is clear that the contract between the two countries must be construed according to the language used in the treaty itself, and the suggestion that owing to some oversight the United States negotiators failed to make a better bargain is quite immaterial.

55 It is also clear from the terms of Mr. Rush's letter of the 18th July, 1853, set out in the appendix to the United States Case at p. 549, that he took the same view of the meaning of Mr. Webster's Notice that is here supported; indeed, he attributed it to a "momentary inadvertence" on the part of Mr. Webster.

The United States Case suggests that Mr. Webster's Notice could not have been understood by the British Government as an acceptance of its view as to the meaning of the word "bays," because the British Foreign Secretary (Lord Malmesbury) shortly afterwards expressed (United States Case, p. 129)—

the sincerest regret that such a publication should have been made.

Lord Malmesbury's language be disregarded. The expression of

But this suggestion has force, only if the proper application of regret had no reference whatever to that part of Mr. Webster's announcement which has just been under discussion. In his publication Mr. Webster had also said (British Case, App., p. 152):—

With the recent change of Ministry in England has occurred an entire change of policy.

And after referring to the British contention he said (British Case, App., p. 153):—

It is this construction of the intent and meaning of the Convention of 1818 for which the colonies have contended since 1841, and which they have desired should be enforced. This the English Government has now, it would appear, consented to do, and the immediate effect will be, the loss of the valuable fall fishing to American fishermen; a complete interruption of the extensive fishing business of New England, attended by constant collisions of the most unpleasant and exciting character, which may end in the destruction of human life, in the involvement of the Government in questions of a very serious nature, threatening the peace of the two countries.

As a matter of fact there had been no change of policy whatever, and it was for the publication of such inaccurate and mischievous statements as those above quoted that Lord Malmesbury expressed regret. Upon the subject of bays, Lord Malmesbury expressly refrained from remark. He said (British Case, App., p. 171):—

As I suppose that this despatch shall merely explain away certain points which have clearly been misunderstood, I shall abstain, for the present, from entering into a discussion upon the interpretation to be given to the term "bay."

56 The United States Case, at p. 129, refers to an unfinished memorandum of Mr. Webster's (United States Case, App., p. 530) in which he argued that the word "bay" denotes "land-locked recesses, places inaccessible to winds, in short natural harbours." But this view is quite inconsistent with any view that has ever been presented on behalf of the United States, and is, it is submitted, obviously untenable. The memorandum, it will be observed, was never finished, and it is impossible to say how far Mr. Webster, if he had lived to finish it, would have modified the expressions on which the Case for the United States relies.

During the season following Mr. Webster's Notice (1853) the British naval authorities had orders (British Case, App., p. 202)—

to drive away, not to actually seize beyond three miles from the shore except in the last resort in case of determined contumacious encroachment in what are clearly the bays of our province,

and it appears that the American Commodore in command upon the fishing grounds assented (British Case, App., pp. 195, 191, 193) to the British view as to bays, and told the American fishermen that they could not fish in the Bay of Chaleurs without violating the treaty.

#### ARGUMENT FROM THE PHRASE "THREE MILES FROM THE BRITISH SHORES."

The United States Case, in support of its contention that the "three marine miles" of the treaty ought to be measured "from low-water mark following the indentations of the coast," refers to various places in the correspondence in which the expression "three miles from the British shores" (or its equivalent) is made use of by British officials.

It is submitted that the use made of these expressions in the United States Case is overstrained, and makes too much of an expression which in many cases may have been used simply for the sake of brevity without trenching on the question as to bays.

For example, a United States circular of instructions (Mr. Boutwell's) gave notice of the termination of the Canadian system of (British Case, App., pp. 235-6)—

granting fishing licences to foreign vessels, under which they have heretofore been permitted to fish within the maritime jurisdiction of the said Dominion, that is to say, within 3 marine miles of the shores thereof;

57 To this phrase the British Minister at Washington (Mr. Thornton) objected (British Case, App., p. 238)—

inasmuch as it limits the maritime jurisdiction of the Dominion of Canada to three marine miles from the shores thereof, without regard to international usage which extends such jurisdiction over creeks and bays.

Mr. Fish (United States Secretary of State) replied that the expression (British Case, App., p. 239)—

was used for the sake of brevity in expressing the interpretation which has been heretofore placed upon the 1st article of the Treaty of 1818 by this Government, and not with the expectation of renewing a controversial discussion upon the subject,

An example of the convenient use of the abbreviated expression may be found in the letter of the Earl of Clarendon to Sir F. Bruce (17th March, 1866). Referring to the British Statute of 1819 and certain colonial statutes, Lord Clarendon said (United States Case, App., p. 565)—

By those Acts, which were only suspended during the existence of the Treaty, severe penalties, extending to confiscation of their vessels, with the cargoes, tackle, stores, &c., are inflicted upon all persons, not British subjects, who shall be found fishing or to have been fishing or preparing to fish within the distance of 3 miles of the coast of Her Majesty's possessions in North America.

The statutory penalties applied to persons taking fish, not only within "three miles of the coast," but within 3 marine miles of any coasts, bays, creeks, or harbours.

Nobody, however, would cite Lord Clarendon's language as an admission that the statute was something quite different from what it actually was.

Another example of the use of the abbreviated expression may be found in the instructions issued by the Canadian Department of Marine and Fisheries on the 14th May, 1870, in which were the words (United States Case, App., p. 582):—

In all other parts foreigners are precluded from fishing within 3 marine miles of Canadian shores.

But various other parts of the same instructions make perfectly clear (what, indeed, no one will question) that the Canadian Government intended to assert jurisdiction over (United States Case, App., p. 584)

"three marine miles of any of the coasts, bays, creeks, or harbours of Canada."

**CONCLUSION.**

In conclusion, His Majesty's Government submits that this question must be decided by the plain language of the treaty, and not by other reasons, and that the treaty applies to all bays without qualification: that in any case the evidence before this Tribunal does not support the argument presented in the Case of the United States; and that the construction for which Great Britain contends, and for which, as has been shown, she has from the first contended, is correct.

## QUESTION SIX.

**"COASTS" AND "SHORES."**

The United States Case deals very shortly indeed with this Question, stating that further discussion of it is reserved.

Under these circumstances His Majesty's Government does not propose at the present stage to add anything to the considerations already submitted in the British Case except to state that it cannot be admitted that (United States Case, p. 245)—

"the United States has always asserted the right of the American fisherman to take fish in the waters referred to, and American fishermen have ever since the treaty was made, openly exercised their right to take fish in these waters."



## QUESTION SEVEN.

## COMMERCIAL PRIVILEGES.

## THE CONTENTIONS.

The question before the Tribunal is whether the inhabitants of the United States whose vessels resort to the treaty coasts for the purpose of exercising the liberties conceded in article 1 have for their vessels, when duly authorised by the United States in that behalf, the commercial privileges on the treaty coasts accorded by agreement or otherwise to vessels engaged only in trade. His Majesty's Government contends that the article confers no right of any kind on American vessels; and that it confers no right on the inhabitants of the United States in regard to trade. If that be so it follows, so far as the treaty of 1818 is concerned (and it is the construction of that treaty alone which is submitted to the judgment of this Tribunal), that there is nothing to prevent Great Britain from imposing such restrictions as she pleases on vessels seeking to trade as well as to fish on the treaty coasts.

In the Case of the United States (p. 249) it is admitted that the question is raised only in relation to the provisions of article 1, but the grounds on which it is contended that a right to trade is given by that article are not stated. The language of the article lends no support to such a contention, and His Majesty's Government submits that this Tribunal should not go behind the language of a treaty when that language is distinct and free from any ambiguity.

Moreover, the United States Government contended before the Halifax tribunal that an analogous treaty (the treaty of 1871) (British Case, pp. 132, 147) gave no right to trade, and in the diplomatic correspondence of 1887 relating to the arrangement proposed in that year, the same view was again advanced by the United States Government. The words used on the latter occasion were (British Case, App., p. 422) :

It is not contended that the right to purchase bait and supplies, or any other privilege of trade was given by the Treaty of 1818.

If, then, the question is raised only in relation to article 1, and that article gives no right to trade, it follows that the question must be answered by this Tribunal in the negative.

## FISHING AND TRADING VESSELS.

The treaty gives a right of access to British shores for certain specific purposes connected with fishing. To accomplish these purposes it is necessary that the vessels employed by the citizens of the United States should hover off the British Colonial coasts. In this respect they differ entirely from trading vessels, which under the laws of all nations are not permitted to hover, but are required to go direct to and from established ports of entry. In fact, the right enjoyed by fishing vessels is so different from that enjoyed by trading vessels that a grant of the one could not be interpreted to include the other.

This distinction between fishing vessels and trading vessels has always been insisted on by Great Britain, and its propriety was fully recognised by Mr. Putnam (one of the United States plenipotentiaries who negotiated the unconfirmed treaty of 1888) who said that, in the United States, confusion had been caused concerning the interpretation of the treaty of 1818, by (British Case, App., p. 428)—overlooking the indubitable fact that the practice of nations recognises a broad line between fishing vessels and ordinary merchant vessels, granting to each class privileges not possessed by the other.

The legislation of the United States, as indeed that of all other countries, has always recognised the distinction.

It is impossible further to discuss the contention of the United States until the grounds on which it is based are made known, and His Majesty's Government is forced to content itself on the present occasion with some observations on particular points of fact raised in the Case of the United States. For the argument on the main question it begs to refer the Tribunal to the British Case.

## NEGOTIATIONS OF 1818.

During the negotiations of 1818 in connection with the fisheries, the American negotiators asked for the liberty of entering the bays and harbours on the non-treaty coasts (British Case, App.,  
63 p. 88) for the purpose of buying bait as well as for the four purposes which were ultimately conceded. To the proposal as to bait, the British representatives took exception, and it was dropped.

In the British counter proposals there were some new clauses (British Case, App., p. 89). One of them affirmed that the liberty of fishing on the treaty coasts should not be construed to extend to any privilege of carrying on trade. It was merely a declaratory provision, which standing alone was entirely surplusage. But it was followed by another clause giving powers of seizure and con-



demnation over fishing vessels having on board any goods, other than necessary supplies, whilst engaged in the fishery or in going to or from the fishing grounds (British Case, App., p. 91). Certain objections were taken by the American representatives, and the clauses were withdrawn. But it is to be observed that no objection was made to the substance of the clause declaring that the article of the treaty should not be construed to extend to any privilege of carrying on trade, and that there was no suggestion at any time during the negotiation that trading privileges should be enjoyed by the American fishermen on the treaty shores. Indeed, Mr. Rush and his colleague had been instructed to negotiate for trading privileges, but the negotiations had failed (British Case, p. 128).

It will be remembered that the British statute of 1786 was in force in Newfoundland in 1818. Under it the sale of fishing vessels or their equipment, of nets or of bait, to persons other than British subjects was expressly prohibited.

There can be no doubt that the treaty of 1818 proceeds upon the basis that the inhabitants of the United States were not to use the treaty shores for the purposes of trade.

#### NON-TREATY COASTS.

The assertion of the British Case that (British Case, p. 150)

“The treaty of 1818 did not confer any commercial privileges”

appears to be admitted by the United States Case as to the non-treaty coasts, for it declares that (United States Case, p. 190)—

“the provisions of the treaty would seem to have no bearing on either side of the question.”

64 At another place the Case says (United States Case, p. 189):—

“It should be noted in passing, however, that the United States did not claim that commercial privileges on the Canadian coasts depended upon the treaty of 1818, the contention of the United States on that point being stated by Secretary of State Bayard in his note of May 10, 1886, to Sir Lionel Sackville-West, the British Minister at Washington at that time. . . .”

In this note, Mr. Bayard, after referring to the reciprocal arrangements between Great Britain and the United States in 1830, and to certain legislation on similar lines, said that (British Case, App., p. 300)—

“These arrangements, so far as the United States are concerned, depend upon municipal statute and upon the discretionary powers of the Executive thereunder.”

Upon these separate and voluntary actions of the two Governments, no claim of right can, of course, be founded. There is no treaty

underlying them, and there is no obligation to continue them. This is emphasised in a report of the Committee for Foreign Relations of the United States Senate (19th Januray, 1887) (British Case, App., p. 397) :—

“The treaties between the United States and Great Britain on the subject of inter-communication, and the rights of the citizens and subjects of the one in the ports and territories of the other have not included the British dominions of North America (with possibly certain exceptions as to intercourse by land), and such intercourse, strangely enough, still remains the subject of legislation merely in the two countries.”

All such arrangements, moreover, relate to trading-vessels only. None of them furnishes the slightest warrant for a claim, by United States fishermen, to the same privileges under the treaty of 1818.

#### TREATY COASTS.

It would appear from the United States Case that the United States intends to argue that although the treaty did not confer commercial privileges on the non-treaty coasts, yet that it did confer such privileges on the treaty coasts. The quotations from United States authorities on pages 141 to 145 of the British Case would seem to supply sufficient reasons why such a contention cannot prevail.

The only point which could be urged in favour of such a distinction would be that, on the non-treaty coasts, the treaty gave 65 United States fishermen liberty to enter the bays and harbours for four specified purposes, and “for no other purposes whatever,” while on the treaty coasts no such words of restriction were used. The United States Case (p. 194) puts the matter in this way :—

“It must also be noted that the renunciatory clause, which was the basis for denying commercial privileges to American fishermen on the coasts covered by it, does not apply to the treaty coasts, and, therefore, on those coasts the American fishermen are not limited by the treaty to the use of the bays and harbors for the four purposes of shelter, repairs, wood, and water, and the ‘no other purposes whatever’ provision has no application to them there.”

But the question is not one of limitation, but of grant. His Majesty’s Government submits that the right to enjoy commercial privileges will not be inferred merely because the treaty contains no specific prohibition of them.

#### “THOMAS F. BAYARD” AND “MASCOTTE.”

The only incidents put forward by the United States as affecting the question of trading on the treaty shores are the cases of the “Thomas F. Bayard” and the “Mascotte.” United States Case, pp. 190-4.)

The United States relies on the correspondence relating to the refusal of permission to these vessels to purchase bait upon the treaty

coasts, apparently with a view of establishing an admission, by the British Government, as to the interpretation of the treaty, in its application to these coasts.

Two paragraphs from this correspondence are cited to show that Lord Iddesleigh had determined that United States fishermen had a right to purchase bait in Canadian and Newfoundland harbours; and that the British Ambassador at Washington had so informed the United States Secretary of State. But there is nothing in the facts to warrant either of these suggestions.

The United States Case, after referring to the refusal of the colonial officials to permit the purchase of bait by the "Thomas F. Bayard" at Bonne Bay, Newfoundland, and by the "Mascotte" at Port Amherst in the Magdalen Islands, and to the warnings given to the vessels to depart, gives a quotation from letter (17th September, 66 1886) addressed by the British Minister at Washington to Mr.

Bayard as follows (the italics are not in the original letter) (United States Case, p. 193) :—

"On the arrival of your note in London, Her Majesty's secretary of state for the colonies telegraphed to the officers administering the Governments of Canada and Newfoundland calling attention to the cases, and explaining that under the treaty of 1818 United States fishermen have the right to fish off the coasts of the Magdalen Islands and off certain coasts of Newfoundland, and stating that it was presumed that the customs officials in those places had not been instructed in the same way as on other parts of the coast.

"On the 25th ultimo the Governments of Canada and Newfoundland were further instructed by dispatches from the colonial office to make full reports on the subject of the complaints in question, and *it was recommended that special instructions should be issued to the authorities at these places where the inshore fishery has been granted by the convention of 1818 to the United States fishermen*, calling their attention to the provisions of that convention, and warning them that no action contrary thereto may be taken in regard to United States fishing vessels.

*"I may add that information has been received that the warning notices referred to by you were discontinued in the beginning of August."*

To understand this letter it is necessary to bear in mind the surrounding circumstances.

By the treaty of 1871, all the Canadian and Newfoundland coast-fisheries were opened to United States fishermen. In 1885 that arrangement came to an end; the conditions of the 1818 treaty revived; and the Americans were restricted to the limits prescribed by it.

A specimen of the warning notices referred to in the despatch of the 17th September, 1886, quoted in the United States Case, is given in that Case at p. 192. It is as follows:—

"I am instructed to give you notice that the presence of your vessel in this port is in violation of the articles of the international conven-

tion of 1818 between Great Britain and the United States, in relation to fishery rights on the coast of Newfoundland, and of the laws in force in this country for the enforcement of the articles of the convention and that the purchase of bait or ice, or other transaction in connection with fishery operations, within 3 miles of the coasts of this colony, will be in further violation of the terms of said convention and laws."

These warning notices related, first, to fishery rights, and, secondly, to purchases in connection with fishery operations; and so far as  
67 they referred to fishery rights, they were clearly improper in so far as they applied to treaty coasts. It is obvious, therefore, that from the withdrawal of these warning notices no argument can be adduced in favour of the American contention as to the existence of trading rights on the treaty coasts. It cannot be construed as involving any admission as to the right to trade on the treaty coasts.

In this connection the United States Case (p. 193) further quotes from the correspondence a paragraph taken from a letter written by Lord Iddesleigh to Mr. Phelps, on the 30th November, 1886, as follows (United States Case, p. 193) :—

"The privileges manifestly secured to United States fishermen by the convention of 1818 in Newfoundland, Labrador, and the Magdalen Islands are not contested by Her Majesty's Government, who, whilst determined to uphold the rights of Her Majesty's North American subjects, as defined in the convention, are no less anxious and resolved to maintain in their full integrity the facilities for prosecuting the fishing industry on certain limited portions of the coast which are expressly granted to citizens of the United States. The communications on the subject of these two schooners, which I have requested Her Majesty's Minister at Washington to address to Mr. Bayard, cannot, I think, have failed to afford to your Government satisfactory assurances in this respect."

The United States Case (p. 193) then proceeds to say that the communications referred to by Lord Iddesleigh will be found in the extract from Sir Lionel Sackville-West's note of the 17th September, 1886, above quoted. This, however, is the less important of the communications referred to by Lord Iddesleigh. The other was that which is referred to in his letter to the British Ambassador at Washington of the 26th November, 1886. In the despatch of that date Lord Iddesleigh forwarded to the British Ambassador at Washington, for communication to the United States Secretary of State, certain documents relating to the "Mascotte," which will be found in the United States appendix at pp. 879-881. These included a copy of a Canadian Order in Council of the 30th October, 1886, of which the following is an extract (United States Case, App., p. 880) :—

"The Minister of Marine and Fisheries, to whom the correspondence was referred, observes that Mr. Bayard, in his note to the British Minister at Washington, says:—

68 “I am also in possession of the affidavit of Alex. T. Vachem, master of the American fishing schooner “Mascotte,” who entered Port Amherst, Magdalen Islands, and was there threatened by the Customs official with seizure of his vessel, if he attempted to obtain bait for fishing or take a pilot.’

“And from a Report of the Customs officer at Magdalen Islands, a copy of which, so far as it relates to the case in point, is hereto annexed, it appears that no grounds exist for the complaint made by the master of the ‘Mascotte.’

“The Minister states that Captain Vachem was served with a printed copy of the ‘warning,’ and was, in addition, informed by the Collector that under the treaty of 1818 he had no right to buy bait or to ship men. He was not forbidden to take fish, but, on the contrary, the Collector pointed out to him on the chart the places in which, by the convention of 1818, he, as a United States fisherman, had the right to inshore fishing, and one of the places so pointed out to him was the Magdalen Islands.

“Notwithstanding the ‘warning’ and the personal explanation of the Collector, it appears that Captain Vachem did go up the country and attempt to hire men, and upon his return informed the Collector that he could not get any. For this, clearly an illegal act he was not interefered with by the Collector.

“The Minister further observes that the convention of 1818, while it grants to United States fishermen the right of fishing in common with British subjects on the shores of the Magdalen Islands, does not confer upon them privileges of trading or of shipping men, and it was against possible acts of the latter kind, and not against fishing inshore, or seeking the rights of hospitality guaranteed under the treaty, that Captain Vachem was warned by the Collector.”

When, therefore, Lord Iddesleigh wrote the letter to Mr. Phelps of the 30th November, 1886, above referred to, he had in mind that he had, a few days before, instructed the British Ambassador at Washington to communicate the position taken by Canada, on the question of purchase of bait, as shown by the Order in Council. Under these circumstances, it is quite impossible to construe his letter of the 30th November, 1886, as an acknowledgment that, in his opinion, American fishermen were entitled to purchase bait under the treaty of 1818. Indeed, the language of other parts of his letter indicates that he was endeavouring to ascertain what the United States contention was, rather than admitting that its contention was correct.

And Mr. Phelps’ reply of the 26th January, 1887, indicates that he so understood Lord Iddesleigh. He said:—

69 “In view of the very grave questions that exists as to the extent of those rights, in respect to which the views of the United States Government differ so widely from those insisted upon by Her Majesty’s Government, it does not seem to me an unreasonable proposal that the two Governments, by a temporary and mutual concession, without prejudice, should endeavour to reach some middle

ground of *ad interim* construction, by which existing friendly relations might be preserved, until some permanent Treaty arrangements could be made (British Case, App., p. 400)."

#### INHIBITION OF COLONIAL LEGISLATION.

The United States refers to the correspondence relating to the "Thomas F. Bayard" and the "Mascotte" for the further purpose of establishing that a British Colonial Secretary at one time (3rd August, 1863) intimated, to the Government of New Foundland, that local legislation, prohibitory of the sale of bait, would not be sanctioned. But there is nothing to show that the Colonial Secretary's reason for so intimating had the slightest connection with the treaty liberties. In 1863, the reciprocity treaty of 1854 was in force; and the Colonial Secretary's letter cannot be held to be indicative of the policy of the Colonial Office under other conditions. Indeed, after the expiration of the treaty, such legislation was sanctioned (United States Case, App., p. 806).

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NORTH ATLANTIC COAST FISHERIES

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APPENDIX TO  
THE COUNTER-CASE

PRESENTED ON THE PART OF

THE GOVERNMENT OF HIS  
BRITANNIC MAJESTY

TO THE

TRIBUNAL CONSTITUTED UNDER AN AGREEMENT

SIGNED AT WASHINGTON ON THE 27TH DAY OF JANUARY, 1909, BETWEEN  
HIS BRITANNIC MAJESTY AND THE UNITED STATES OF AMERICA

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6	1766.....	Statute: 6 George III, Cap. 52. An Act for repealing certain Duties, in the British Colonies and Plantations, granted by several Acts of Parliament; and also the Duties imposed by an Act made in the last Session of Parliament upon certain East India Goods exported from Great Britain; and for granting other Duties instead thereof; and for further encouraging, regulating, and securing, several Branches of the Trade of this Kingdom, and the British Dominions in America. (Extract.)	220

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8	1769.....	Statute: 9 George III, Cap. 28. An Act to permit the Inhabitants of <i>Jersey</i> and <i>Guernsey</i> to export directly from thence to <i>Newfoundland</i> , or the <i>British</i> Colonies in <i>America</i> , Goods necessary for the Fishery, under certain Restrictions; and to import from thence Non-enumerated Goods (except Rum) and to land the same in the said Islands.	222
9	1776.....	Statute: 16 George III, Cap. 47. An Act for the further Encouragement of the Whale Fishery carried on from <i>Great Britain</i> and <i>Ireland</i> , and the <i>British</i> Dominions in <i>Europe</i> , and for regulating the Fees to be taken by the Officers of the Customs in the Island of <i>Newfoundland</i> . (Extract.)	223
10	1788.....	Statute: 28 George III, Cap. 37. An Act for repealing the Duties on Buck or Deer Skins undressed, Buck or Deer Skins <i>Indian</i> half-dressed, and Elk Skins undressed, imported, and on Hides and Skins dressed in Oil in this Kingdom, and for granting other Duties in lieu thereof; for laying a Duty on Stuffs printed, painted, stained, or dyed in <i>Great Britain</i> ; allowing Deer and other Skins the Produce of <i>Florida</i> to be sold by Auction, free from the duty charged on such sales; for amending several Laws relative to the Revenue of Excise; and to prevent the Sale of Sweets for Consumption in the Houses of Retailers thereof, who shall not have Licenses to sell Beer or Ale. (Extract.)	224
11	1825, July 5.....	Statute: 6 George IV, Cap. 114. An Act to regulate the Trade of the <i>British</i> Possessions abroad. (Extract.)	225
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## PART I.

### TREATIES.

No. 1.—1778, February 6: *Treaty of Alliance between the United States of America and His Most Christian Majesty.*

The Most Christian King and the United States of North America, to wit: New Hampshire, Massachusetts Bay, Rhodes Island, Connecticut, New York, New Jersey, Pennsylvania, Delaware, Maryland, Virginia, North Carolina, South Carolina, and Georgia, having this day concluded a treaty of amity and commerce, for the reciprocal advantage of their subjects and citizens, have thought it necessary to take into consideration the means of strengthening those engagements, and of rendering them useful to the safety and tranquility of the two parties; particularly in case Great Britain, in resentment of that connection and of the good correspondence which is the object of the said treaty, should break the peace with France, either by direct hostilities, or by hindring her commerce and navigation in a manner contrary to the rights of nations, and the peace subsisting between the two Crowns. And His Majesty and the said United States, having resolved in that case to join their counsels and efforts against the enterprises of their common enemy, the respective Plenipotentiaries empowered to concert the clauses and conditions proper to fulfil the said intentions, have, after the most mature deliberation, concluded and determined on the following articles:

#### ARTICLE I.

If war should break out between France and Great Britain during the continuance of the present war between the United States and England, His Majesty and the said United States shall make it a common cause and aid each other mutually with their good offices, their counsels and their forces, according to the exigence of conjunctures, as becomes good and faithful allies.

#### ARTICLE II.

The essential and direct end of the present defensive alliance is to maintain effectually the liberty, sovereignty, and independence absolute and unlimited, of the said United States, as well in matters of government as of commerce.

#### ARTICLE III.

The two contracting parties shall each on its own part, and in the manner it may judge most proper, make all the efforts in its power against their common enemy, in order to attain the end proposed.

## ARTICLE IV.

The contracting parties agree that in case either of them should form any particular enterprise in which the concurrence of the other may be desired, the party whose concurrence is desired, shall readily, and with good faith, join to act in concert for that purpose, as far as circumstances and its own particular situation will permit; and in that case, they shall regulate, by a particular convention, the quantity and kind of succour to be furnished, and the time and manner of its being brought into action, as well as the advantages which are to be its compensation.

## ARTICLE V.

If the United States should think fit to attempt the reduction of the British power, remaining in the northern parts of America, or the islands of Bermudas, those countries or islands, in case of success, shall be confederated with or dependant upon the said United States.

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## ARTICLE VI.

The Most Christian King renounces forever the possession of the islands of Bermudas, as well as of any part of the continent of North America, which before the Treaty of Paris in 1763, or in virtue of that treaty, were acknowledged to belong to the Crown of Great Britain, or to the United States, heretofore called British Colonies, or which are at this time, or have lately been under the power of the King and Crown of Great Britain.

## ARTICLE VII.

If His Most Christian Majesty shall think proper to attack any of the islands situated in the Gulph of Mexico, or near that Gulph, which are at present under the power of Great Britain, all the said isles, in case of success, shall appertain to the Crown of France.

## ARTICLE VIII.

Neither of the two parties shall conclude either truce or peace with Great Britain without the formal consent of the other first obtained; and they mutually engage not to lay down their arms until the independence of the United States shall have been formally or tacitly assured by the treaty or treaties that shall terminate the war.

## ARTICLE IX.

The contracting parties declare, that being resolved to fulfil each on its own part the clauses and conditions of the present treaty of alliance, according to its own power and circumstances, there shall be no after claim of compensation on one side or the other, whatever may be the event of the war.



## ARTICLE X.

The Most Christian King and the United States agree to invite or admit other powers who may have received injuries from England, to make common cause with them, and to accede to the present alliance, under such conditions as shall be freely agreed to and settled between all the parties.

## ARTICLE XI.

The two parties guarantee mutually from the present time and forever against all other powers, to wit: The United States to His Most Christian Majesty, the present possessions of the Crown of France in America, as well as those which it may acquire by the future treaty of peace: And His Most Christian Majesty guarantees on his part to the United States their liberty, sovereignty, and independence, absolute and unlimited, as well in matters of government as commerce, and also their possessions, and the additions or conquests that their confederation may obtain during the war, from any of the dominions now, or heretofore possessed by Great Britain in North America, conformable to the 5th and 6th articles above written, the whole as their possessions shall be fixed and assured to the said States, at the moment of the cessation of their present war with England.

## ARTICLE XII.

In order to fix more precisely the sense and application of the preceding article, the contracting parties declare, that in case of a rupture between France and England the reciprocal guarantee declared in the said article shall have its full force and effect the moment such war shall break out; and if such rupture shall not take place, the mutual obligations of the said guarantee shall not commence until the moment of the cessation of the present war between the United States and England shall have ascertained their possessions.

## ARTICLE XIII

The present Treaty shall be ratified on both sides, and the ratifications shall be exchanged in the space of six months, or sooner if possible.

In faith whereof the respective Plenipotentiaries, to wit: On the part of the Most Christian King, Conrad Alexander Gerard, Royal Syndic of the city of Strasbourgh, and Secretary of His Majesty's Council of State; and on the part of the United States, Benjamin Franklin, Deputy to the General Congress from the State of Pennsylvania, and President of the Convention of the same State, Silas Deane, heretofore Deputy from the State of Connecticut, and Arthur Lee, Councillor at Law, have signed the above articles both in the French and English languages, declaring, nevertheless, that the present Treaty was originally composed and concluded in the French language, and they have hereunto affixed their seals.

Done at Paris, this sixth day of February, one thousand seven hundred and seventy-eight.

C. A. GERARD.	[L. s.]
B. FRANKLIN.	[L. s.]
SILAS DEANE.	[L. s.]
ARTHUR LEE.	[L. s.]

- 3 No. 2.—1778, February 6: *Extract from Treaty of Amity and Commerce between the United States of America and His Most Christian Majesty.*

#### ARTICLE IX.

The subjects, inhabitants, merchants, commanders of ships, masters, and mariners of the states, provinces, and dominions of each party respectively shall abstain and forbear to fish in all places possessed or which shall be possessed by the other party; the Most Christian King's subjects shall not fish in the havens, bays, creeks, roads, coasts, or places which the said United States hold or shall hereafter hold; and in like manner the subjects, people, and inhabitants of the said United States shall not fish in the havens, bays, creeks, roads, coasts, or places which the Most Christian King possesses or shall hereafter possess; and if any ship or vessel shall be found fishing contrary to the tenor of this treaty, the said ship or vessel, with its lading, proof being made thereof, shall be confiscated. It is, however, understood that the exclusion stipulated in the present article shall take place only so long and so far as the Most Christian King or the United States shall not in this respect have granted an exemption to some other nation.

#### ARTICLE X.

The United States, their citizens and inhabitants, shall never disturb the subjects of the Most Christian King in the enjoyment and exercise of the right of fishing on the banks of Newfoundland, nor in the indefinite and exclusive right which belongs to them on that part of the coast of that island which is designed by the treaty of Utrecht; nor in the rights relative to all and each of the isles which belong to His Most Christian Majesty; the whole conformable to the true sense of the treaties of Utrecht and Paris.

- No. 3.—1909, January 9: *Treaty between the United States of America and the Republic of Colombia.*

The United States of America and the Republic of Colombia, being equally animated by the desire to remove all obstacles to a good understanding between them and to facilitate the settlement of the questions heretofore pending between Colombia and Panama by adjusting at the same time the relations of Colombia to the canal which the United States is now constructing across the Isthmus of Panama, have resolved to conclude a Treaty and to that end have appointed as their Plenipotentiaries:

The President of the United States of America, Elihu Root, Secretary of State of the United States;

The President of the Republic of Colombia, Señor Don Enrique Cortes, Envoy Extraordinary and Minister Plenipotentiary of the Republic of Colombia at Washington;

Who, after communicating to each other their respective full powers, which were found to be in due and proper form, have agreed upon the following articles:

## ARTICLE I.

There shall be mutual and inviolable peace and sincere friendship between the Governments and peoples of the two High Contracting Parties without exception of persons or places under their respective dominion.

## ARTICLE II.

In consideration of the provisions and stipulations hereinafter contained it is agreed as follows:

The Republic of Colombia shall have liberty at all times to convey through the ship canal now in course of construction by the United States across the Isthmus of Panama the troops, materials for war and ships of war of the Republic of Colombia, without paying any duty to the United States; even in the case of an international war between Colombia and another country.

While the said interoceanic canal is in course of construction, the troops and materials for war of the Republic of Colombia, even in the case of an international war between Colombia and any other country, shall be transported on the railway between Ancon and Cristobal, or on any other railway substituted therefor, upon the same conditions on which similar service is rendered to the United States.

The officers, agents, and employees of the Government of Colombia shall, during the same period, be entitled to free passage upon the said railway across the Isthmus of Panama upon due notification to the railway officials and the production of evidence of their official character.

The foregoing provisions of this article shall not, however, apply in case of war between Colombia and Panama.

## ARTICLE III.

The products of the soil and industry of the Republic of Colombia, such as provisions, cattle, etc., shall be admitted to entry in the Canal Zone subject only to such duty as would be payable on similar products of the United States of America under similar conditions, so far as the United States of America has any right or authority to fix the conditions of such importations.

Colombian labourers employed in the Canal Zone during the construction of the canal, who may desire that their own families supply them with provisions for their personal use, shall be entitled to have such provisions admitted to the Canal Zone for delivery to them free of any duty, provided that declaration thereof shall first have been made before the commissary officers of the Isthmian Canal Commission, in order to obtain previous permit for such entry, and subject to such reasonable regulations as shall be prescribed by the Commission for ensuring the *bona fides* of the transaction.

## ARTICLE IV.

Colombian mails shall have free passage through the Canal Zone and through the post-offices of Ancon and Cristobal in the Canal Zone, paying only such duties or charges as are paid by the mails of the United States.

During the construction of the canal, Colombian products passing over the Isthmian Railway from and to Colombian ports shall be transported at the lowest rates which are charged for similar products of the United States passing over said railway to and from the ports of the United States; and sea salt, exclusively produced in Colombia, passing from the Atlantic coast of Colombia to any Colombian port on the Pacific coast, shall be transported over said railway free of any charge except the actual cost of handling and transportation, not exceeding one-half of the ordinary freight charges.

#### ARTICLE V.

The United States recognizes and accepts notice of the assignment by the Republic of Panama to the Republic of Colombia of the right to receive from the United States payment of \$250,000 in American gold in each year from the year 1908 to the year 1917, both inclusive, such assignment having been made in manner and form as contained in the treaty between the Republic of Colombia and the Republic of Panama bearing even date herewith, whereby the independence of the Republic of Panama is recognized by the Republic of Colombia and the Republic of Panama is released from obligation for the payment of any part of the external and internal debt of the Republic of Colombia.

#### ARTICLE VI.

The Republic of Colombia grants to the United States the use of all the ports of the Republic open to commerce as places of refuge for any vessels employed in the canal enterprise, and for all vessels in distress passing or bound to pass through the canal and seeking shelter or anchorage in said ports, subject in time of war to the rules of neutrality properly applicable thereto. Such vessels shall be exempt from anchorage or tonnage dues on the part of the Republic of Colombia.

The Republic of Colombia renounces all rights and interests in connection with any contract or concession made between it and any corporation or person relating to the construction or operation of a canal or railway across the Isthmus of Panama.

#### ARTICLE VII.

As soon as practicable after the exchange of ratifications of this treaty and the contemporaneous treaties of even date herewith between the United States of America and the Republic of Panama, and between the Republic of Colombia and the Republic of Panama, the United States of America and the Republic of Colombia will enter into negotiations for the revision of the Treaty of Peace, Amity, Navigation, and Commerce between the United States of America and the Republic of New Granada, concluded on the 12th day of December, 1846, with a view to making the provisions therein contained conform to existing conditions, and to including therein provision for a general treaty of arbitration.

## ARTICLE VIII.

This treaty, duly signed by the High Contracting Parties, shall be ratified by each according to its respective laws, and the ratifications thereof shall be exchanged at Washington as soon as possible.

But it is understood that such ratifications are not to be exchanged nor the provisions of this treaty made obligatory upon either party, until and unless the aforesaid treaties between the Republic of Colombia and the Republic of Panama, and between the United States of America and Republic of Panama, bearing even date herewith, are both duly ratified, and the ratifications thereof are exchanged simultaneously with the exchange of ratifications of this treaty.

In witness whereof, We, the respective Plenipotentiaries, have signed the present treaty in duplicate, in the English and Spanish languages, and have hereunto affixed our respective seals.

Done at the City of Washington, the 9th day of January, in the year of our Lord nineteen hundred and nine.

(Signed)	ENRIQUE CORTES	[SEAL]
(Signed)	ELIHU ROOT	[SEAL]



## PART II.

### DOCUMENTS BEARING ON THE TREATY OF 1783.

No. 1.—1776, July 4: *The United States Declaration of Independence.*—In Congress, July 4, 1776.—*The unanimous Declaration of the 13 United States of America.*

When, in the course of human events, it becomes necessary for one people to dissolve the political bands which have connected them with another, and to assume, among the Powers of the earth, the separate and equal station to which the laws of nature and of nature's God entitle them, a decent respect to the opinions of mankind requires that they should declare the causes which impel them to the separation.

We hold these truths to be self-evident: that all men are created equal; that they are endowed, by their Creator, with certain unalienable rights; that among these are life, liberty, and the pursuit of happiness. That to secure these rights, governments are instituted among men, deriving their just powers from the consent of the governed; that whenever any form of government becomes destructive of these ends, it is the right of the people to alter or to abolish it, and to institute a new government, laying its foundation on such principles, and organising its powers in such form, as to them shall seem most likely to effect their safety and happiness. Prudence, indeed, will dictate, that governments long established, should not be changed for light and transient causes; and accordingly all experience hath shown, that mankind are more disposed to suffer, while evils are sufferable, than to right themselves by abolishing the forms to which they are accustomed. But when a long train of abuses and usurpations, pursuing invariably the same object, evinces a design to reduce them under absolute despotism, it is their right, it is their duty, to throw off such government, and to provide new guards for their future security. Such has been the patient sufferance of these colonies; and such is now the necessity which constrains them to alter their former systems of government. The history of the present King of Great Britain is a history of repeated injuries and usurpations, all having in direct object the establishment of an absolute tyranny over these states. To prove this, let facts be submitted to a candid world.

He has refused his assent to laws the most wholesome and necessary for the public good.

He has forbidden his governors to pass laws of immediate and pressing importance, unless suspended in their operation till his assent should be obtained, and when so suspended, he has utterly neglected to attend to them.

He has refused to pass other laws for the accommodation of large districts of people, unless those people would relinquish the right of

representation in the legislature; a right inestimable to them, and formidable to tyrants only. He has called together legislative bodies at places unusual, uncomfortable, and distant from the depository of their public records, for the sole purpose of fatiguing them into compliance with his measures.

He has dissolved representative houses repeatedly, for opposing, with manly firmness, his invasions on the rights of the people.

He has refused for a long time, after such dissolutions, to cause others to be elected; whereby the legislative powers, incapable of annihilation, have returned to the people at large for their exercise; the State remaining, in the meantime, exposed to all the dangers of invasion from without, and convulsions within.

He has endeavoured to prevent the population of these States; for that purpose obstructing the laws for naturalization of foreigners; refusing to pass others to encourage their migrations hither, and raising the conditions of new appropriations of lands.

He has obstructed the administration of justice, by refusing his assent to laws for establishing judiciary powers.

He has made judges dependent on his will alone, for the tenure of their offices, and the amount and payment of their salaries.

He has erected a multitude of new offices, and sent hither swarms of officers, to harass our people, and eat out their substance.

He has kept among us, in times of peace, standing armies, without the consent of our legislatures.

He has affected to render the military independent of, and superior to the civil power.

He has combined with others to subject us to a jurisdiction foreign to our constitution, and unacknowledged by our laws; giving his assent to their acts of pretended legislation:

For quartering large bodies of armed troops among us;

For protecting them, by a mock trial, from punishment for any murders which they should commit on the inhabitants of these states;

6 For cutting off our trade with all parts of the world;

For imposing taxes on us without our consent;

For depriving us, in many cases, of the benefits of trial by jury;

For transporting us beyond seas to be tried for pretended offences;

For abolishing the free system of English laws in a neighbouring province, establishing therein an arbitrary government, and enlarging its boundaries, so as to render it at once an example and fit instrument for introducing the same absolute rule into these colonies;

For taking away our charters, abolishing our most valuable laws, and altering fundamentally the forms of our governments;

For suspending our own legislatures, and declaring themselves invested with power to legislate for us in all cases whatsoever.

He has abdicated government here, by declaring us out of his protection, and waging war against us.

He has plundered our seas, ravaged our coasts, burnt our towns, and destroyed the lives of our people.

He is at this time transporting large armies of foreign mercenaries to complete the works of death, desolation, and tyranny, already begun with circumstances of cruelty and perfidy, scarcely paralleled in the most barbarous ages, and totally unworthy the head of a civilised nation.



He has constrained our fellow-citizens, taken captive on the high seas, to bear arms against their country, to become the executioners of their friends and brethren, or to fall themselves by their hands.

He has excited domestic insurrections amongst us, and has endeavoured to bring on the inhabitants of our frontiers the merciless Indian savages, whose known rule of warfare is an undistinguished destruction of all ages, sexes, and conditions.

In every stage of these oppressions we have petitioned for redress in the most humble terms. Our repeated petitions have been answered only by repeated injury. A prince, whose character is thus marked by every act which may define a tyrant, is unfit to be the ruler of a free people.

Nor have we been wanting in attentions to our British brethren. We have warned them from time to time, of attempts by their legislature to extend an unwarrantable jurisdiction over us. We have reminded them of the circumstances of our emigration and settlement here. We have appealed to their native justice and magnanimity, and we have conjured them by the ties of our common kindred to disavow these usurpations, which would inevitably interrupt our connections and correspondence. They too have been deaf to the voice of justice and of consanguinity. We must, therefore, acquiesce in the necessity which denounces our separation, and hold them, as we hold the rest of mankind, enemies in war, in peace friends.

We, therefore, the representatives of the United States of America, in general Congress assembled, appealing to the supreme judge of the world for the rectitude of our intentions, do, in the name, and by authority of the good people of these colonies, solemnly publish and declare, that these united colonies are, and of right ought to be, free and independent states; that they are absolved from all allegiance to the British Crown, and that all political connection between them and the State of Great Britain is, and ought to be, totally dissolved; and that, as free and independent states, they have full power to levy war, conclude peace, contract alliances, establish commerce, and to do all other acts and things which independent States may of right do. And for the support of this declaration, with a firm reliance on the protection of Divine Providence, we mutually pledge to each other our lives, our fortunes, and our sacred honour.

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No. 2.—1776, *December 30: Extract from the Instructions given by Congress to their Commissioners to France.*

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That the commissioners be likewise instructed to assure His Most Christian Majesty, that should his forces be employed, in conjunction with those of the United States, to exclude His Britannic Majesty from any share in the cod fishery of America, by reducing the Islands of Newfoundland and Cape Breton, and ships of war be furnished, when required by the United States, to reduce Nova Scotia, the fishery shall be enjoyed equally and in common by the subjects of His Most Christian Majesty and of these States, to the exclusion of all other nations and people whatever; and half the Island of Newfoundland shall be owned by and subject to the jurisdiction of His Most

Christian Majesty; provided that the Province of Nova Scotia, Island of Cape Breton, and the remaining part of Newfoundland be annexed to the territory and Government of the United States.

\* \* \* \* \*

- 7 No. 3.—1778, July 9: *Articles of Confederation and Perpetual Union between the States of New Hampshire, Massachusetts Bay, Rhode Island and Providence Plantations, Connecticut, New York, New Jersey, Pennsylvania, Delaware, Maryland, Virginia, North Carolina, South Carolina, and Georgia.*

ARTICLE I. The style of this confederacy shall be, "The United States of America."

ART. II. Each State retains its sovereignty, freedom, and independence, and every power, jurisdiction, and right, which is not by this confederation expressly delegated to the United States in Congress assembled.

ART. III. The said States hereby severally enter into a firm league of friendship with each other, for their common defence, the security of their liberties, and their mutual and general welfare, binding themselves to assist each other against all force offered to, or attacks made upon them, or any of them, on account of religion, sovereignty, trade, or any other pretence whatever.

ART. IV. The better to secure and perpetuate mutual friendship and intercourse among the people of the different States in this Union, the free inhabitants of each of these States, paupers, vagabonds, and fugitives, from justice excepted, shall be entitled to all privileges and immunities of free citizens in the several States; and the people of each State shall have free ingress and regress to and from any other State, and shall enjoy therein all the privileges of trade and commerce, subject to the same duties, impositions, and restrictions, as the inhabitants thereof respectively; provided that such restrictions shall not extend so far as to prevent the removal of property imported into any State, to any other State of which the owner is an inhabitant; provided, also, that no imposition, duties, or restriction, shall be laid by any State on the property of the United States, or either of them.

If any person guilty of, or charged with, treason, felony, or other high misdemeanour in any State, shall flee from justice, and be found in any of the United States, he shall, upon demand of the governor or executive power of the State from which he fled, be delivered up, and removed to the State having jurisdiction of his offence.

Full faith and credit shall be given, in each of these States, to the records, acts, and judicial proceedings of the courts and magistrates of every other State.

ART. V. For the more convenient management of the general interests of the United States, delegates shall be annually appointed in such manner as the legislature of each State shall direct, to meet in Congress on the first Monday in November, in every year, with a power reserved to each State to recall its delegates, or any of them, at any time within the year, and to send others in their stead for the remainder of the year.

No State shall be represented in Congress by less than two, nor by more than seven members; and no person shall be capable of being a delegate for more than three years, in any term of six years; nor shall any person, being a delegate, be capable of holding any office under the United States, for which he, or another for his benefit, receives any salary, fees, or emolument of any kind.

Each State shall maintain its own delegates in any meeting of the States, and while they act as members of the committee of the States.

In determining questions in the United States, in Congress assembled, each State shall have one vote.

Freedom of speech and debate in Congress shall not be impeached or questioned in any court or place out of Congress; and the members of Congress shall be protected in their persons from arrests and imprisonments during the time of their going to and from, and attendance on Congress, except for treason, felony, or breach of the peace.

ART. VI. No State, without the consent of the United States, in Congress assembled, shall send any embassy to, or receive any embassy from, or enter into any conference, agreement, alliance, or treaty, with any king, prince, or state; nor shall any person holding any office of profit or trust under the United States, or any of them, accept of any present, emolument, office, or title of any kind whatever, from any king, prince, or foreign state; nor shall the United States, in Congress assembled, or any of them, grant any title of nobility.

No two or more States shall enter into any treaty, confederation, or alliance whatever between them, without the consent of the United States, in Congress assembled, specifying accurately the purposes for which the same is to be entered into, and how long it shall continue.

No States shall lay any imposts or duties which may interfere with any stipulations in treaties entered into by the United States, in Congress assembled, with any king, prince, or state, in pursuance of any treaties already proposed by Congress to the courts of France and Spain.

No vessels of war shall be kept up in time of peace by any State, except such number only as shall be deemed necessary by the United States, in Congress assembled, for the defence of such State or its trade; nor shall any body of forces be kept up by any State, in time of peace, except such number only as, in the judgment of the United States, in Congress assembled, shall be deemed requisite to garrison the forts necessary for the defence of such State; but every State shall always keep up a well-regulated and disciplined militia, sufficiently armed and accoutred, and shall provide and constantly have ready for use, in public stores a due number of field-pieces and tents, and a proper quantity of arms, ammunition, and camp equipage.

No State shall engage in any war without the consent of the United States, in Congress assembled, unless such State be actually invaded by enemies, or shall have received certain advice of a resolution being formed by some nation of Indians to invade such State, and the danger is so imminent as not to admit of a delay till the United States, in Congress assembled, can be consulted; nor shall any

8 State grant commissions to any ships or vessels of war, nor letters of marque or reprisal, except it be after a declaration of war by the United States, in Congress assembled, and then only against the kingdom or state, and the subjects thereof against which war has been so declared, and under such regulations as shall be established by the United States, in Congress assembled, unless such State be invested by pirates, in which case vessels of war may be fitted out for that occasion, and kept so long as the danger shall continue, or until the United States, in Congress assembled, shall determine otherwise.

ART. VII. When land forces are raised by any State for the common defence, all officers of or under the rank of colonel shall be appointed by the legislature of each State respectively by whom such forces shall be raised, or in such manner as such State shall direct, and all vacancies shall be filled up by the State which first made the appointment.

ART. VIII. All charges of war, and all other expenses that shall be incurred for the common defence or general welfare, and allowed by the United States, in Congress assembled, shall be defrayed out of a common treasury, which shall be supplied by the several States, in proportion to the value of all land within each State, granted to, or surveyed for, any person, as such land and the buildings and improvements thereon shall be estimated according to such mode as the United States, in Congress assembled, shall, from time to time, direct and appoint. The taxes for paying that proportion shall be laid and levied by the authority and direction of the legislatures of the several States, within the time agreed upon by the United States, in Congress assembled.

ART. IX. The United States, in Congress assembled, shall have the sole and exclusive right and power of determining on peace and war, except in the cases mentioned in the sixth Article; of sending and receiving ambassadors; entering into treaties and alliances, provided that no treaty of commerce shall be made whereby the legislative power of the respective States shall be restrained from imposing such imposts and duties on foreigners, as their own people are subjected to, or from prohibiting the exportation or importation of any species of goods or commodities whatsoever; of establishing rules for deciding, in all cases, what captures on land or water shall be legal, and in what manner prizes taken by land or naval forces in the service of the United States shall be divided or appropriated; of granting letters of marque and reprisal in times of peace; appointing courts for the trial of piracies and felonies committed on the high seas; and establishing courts for receiving and determining finally appeals in all cases of capture; provided that no member of Congress shall be appointed as judge of any of the said courts.

The United States, in Congress assembled, shall also be the last resort on appeal, in all disputes and differences now subsisting, or that hereafter may arise between two or more States concerning boundary, jurisdiction, or any other cause whatever; which authority shall always be exercised in the manner following: Whenever the legislative or executive authority, or lawful agent of any State in controversy with another, shall present a petition to Congress, stating the matter in question, and praying for a hearing, notice thereof shall be given by order of Congress to the legislative or execu-

tive authority of the other State in controversy, and a day assigned for the appearance of the parties by their lawful agents, who shall then be directed to appoint, by joint consent, commissioners or judges to constitute a court for hearing and determining the matter in question; but if they cannot agree, Congress shall name three persons out of each of the United States, and from the list of such persons each party shall alternately strike out one of the petitioners beginning, until the number shall be reduced to thirteen; and from that number not less than seven nor more than nine names, as Congress shall direct, shall, in the presence of Congress, be drawn out by lot; and the persons whose names shall be so drawn, or any five of them, shall be commissioners or judges, to hear and finally determine the controversy, so always as a major part of the judges who shall hear the cause shall agree in the determination; and if either party shall neglect to attend at the day appointed, without showing reasons which Congress shall judge sufficient, or being present, shall refuse to strike, the Congress shall proceed to nominate three persons out of each State, and the secretary of Congress shall strike in behalf of such party absent or refusing; and the judgment and sentence of the court, to be appointed in the manner before prescribed, shall be final and conclusive; and if any of the parties shall refuse to submit to the authority of such court, or to appear or defend their claim or cause, the court shall nevertheless proceed to pronounce sentence or judgment, which shall in like manner be final and decisive; the judgment or sentence and other proceedings being in either case transmitted to Congress, and lodged among the acts of Congress for the security of the parties concerned; provided that every commissioner, before he sits in judgment, shall take an oath, to be administered by one of the judges of the superior court of the State where the cause shall be tried, "well and truly to hear and determine the matter in question, according to the best of his judgment, without favour, affection, or hope of reward." Provided, also, that no State shall be deprived of territory for the benefit of the United States.

All controversies concerning the private right of soil claimed under different grants of two or more States, whose jurisdictions, as they may respect such lands, and the States which passed such grants, are adjusted, the said grants or either of them being at the same time claimed to have originated antecedent to such settlement of jurisdiction, shall, on the petition of either party to the Congress of the United States, be finally determined, as near as may be, in the same manner as is before prescribed for deciding disputes respecting territorial jurisdiction between different States.

The United States, in Congress assembled, shall also have the sole and exclusive right and power of regulating the alloy and value of coin struck by their own authority, or by that of the respective States; fixing the standard of weights and measures throughout the United States; regulating the trade and managing all affairs with the Indians not members of any of the States; provided that the legislative right of any State, within its own limits, be not infringed or violated; establishing and regulating post-offices from one State to another throughout all the United States, and exacting such postage on the papers passing through the same as may be required to defray the expenses of the said office; appointing all officers of the land forces in the service of the United States, excepting regimental officers; appointing all the officers of the naval forces, and com-

missioning all officers whatever in the service of the United States; making rules for the government and regulation of the said land and naval forces, and directing their operations.

The United States, in Congress assembled, shall have authority to appoint a committee, to sit in the recess of Congress, to be denominated "A Committee of the States," and to consist of one delegate from each State; and to appoint such other committees and civil officers as may be necessary for managing the general affairs of the United States under their direction; to appoint one of their number to preside, provided that no person be allowed to serve in the office of president more than one year in any term of three years; to ascertain the necessary sums of money to be raised for the service of the United States, and to appropriate and apply the same for defraying the public expenses; to borrow money or emit bills on the credit of the United States, transmitting every half year to the respective States an account of the sums of money so borrowed or emitted; to build and equip a navy; to agree upon the number of land forces, and to make requisitions from each State for its quota, in proportion to the number of white inhabitants in such State, which requisition shall be binding; and thereupon the legislature of each State shall appoint the regimental officers, raise the men, and clothe, arm, and equip them in a soldier-like manner at the expense of the United States; and the officers and men so clothed, armed, and equipped shall march to the place appointed, and within the time agreed on by the United States, in Congress assembled; but if the United States, in Congress assembled, shall, on consideration of circumstances, judge proper that any State should not raise men, or should raise a smaller number than its quota, and that any other State should raise a greater number of men than the quota thereof, such extra number shall be raised, officered, clothed, armed, and equipped in the same manner as the quota of such State, unless the legislature of such State, shall judge that such extra number cannot be safely spared out of the same, in which case they shall raise, officer, clothe, arm, and equip as many of such extra number as they judge can be safely spared, and the officers and men so clothed, armed, and equipped shall march to the place appointed, and within the time agreed on by the United States, in Congress assembled.

The United States, in Congress assembled, shall never engage in a war, nor grant letters of marque and reprisal in time of peace, nor enter into any treaties or alliances, nor coin money, nor regulate the value thereof, nor ascertain the sums and expenses necessary for the defence and welfare of the United States, or any of them, nor emit bills, nor borrow money on the credit of the United States, nor appropriate money, nor agree upon the number of vessels of war to be built or purchased, or the number of land or sea forces to be raised, nor appoint a commander-in-chief of the army or navy, unless nine States assent to the same, nor shall a question on any other point, except for adjourning from day to day, be determined, unless by the votes of a majority of the United States, in Congress assembled.

The Congress of the United States shall have power to adjourn to any time within the year, and to any place within the United States, so that no period of adjournment be for a longer duration than the space of six months, and shall publish the journal of their proceedings monthly, except such parts thereof relating to treaties, alliances, or military operations as in their judgment require secrecy; and the

yeas and nays of the delegates of each State on any question, shall be entered on the journal, when it is desired by any delegate; and the delegates of a State, or any of them, at his or their request, shall be furnished with a transcript of the said journal, except such parts as are above excepted, to lay before the legislatures of the several States.

ART. X. The committee of the States, or any nine of them, shall be authorized to execute, in the recess of Congress, such of the powers of Congress as the United States, in Congress assembled, by the consent of nine States, shall, from time to time, think expedient to vest them with; provided that no power be delegated to the said committee, for the exercise of which, by the Articles of Confederation, the voice of nine States, in the Congress of the United States assembled, is requisite.

ART. XI. Canada acceding to this Confederation, and joining in the measures of the United States, shall be admitted into, and entitled to all the advantages of this Union, but no other colony shall be admitted into the same unless such admission be agreed to by nine States.

ART. XII. All bills of credit emitted, moneys borrowed, and debts contracted by or under the authority of Congress, before the assembling of the United States, in pursuance of the present Confederation, shall be deemed and considered as a charge against the United States, for payment and satisfaction whereof the said United States and the public faith are hereby solemnly pledged.

ART. XIII. Every State shall abide by the determinations of the United States, in Congress assembled, on all questions which by this Confederation are submitted to them. And the Articles of this Confederation shall be inviolably observed by every State, and the Union shall be perpetual; nor shall any alteration at any time hereafter be made in any of them, unless such alteration be agreed to in a Congress of the United States, and be afterwards confirmed by the legislatures of every State.

*And whereas* it hath pleased the great Governor of the world to incline the hearts of the legislatures we respectively represent in Congress to approve of, and to authorize us to ratify the said Articles of Confederation and perpetual Union, Know ye, that we, the undersigned delegates, by virtue of the power and authority to us given for that purpose, do, by these presents, in the name and in behalf of our respective constituents, fully and entirely ratify and confirm each and every of the said Articles of Confederation and perpetual Union, and all and singular the matters and things therein contained. And we do further solemnly plight and engage the faith of our respective constituents, that they shall abide by the determinations of the United States, in Congress assembled, on all questions which by the said Confederation are submitted to them; and that the Articles thereof shall be inviolably observed by the States we respectively represent, and that the Union shall be perpetual. In witness whereof we have hereunto set our hands in Congress. Done at Philadelphia, in the State of Pennsylvania, the ninth day of July, in the year of our Lord 1778, and in the third year of the Independence of America.

[These Articles were not ratified by all the States until 1st March 1781, when the delegates of Maryland, the latest in ratifying, signed for her.]

No. 4.—1779: *Extracts from "Journals of the Continental Congress" (United States), vols. 13 and 14.*

1779, February 23. . . . The committee to whom were referred the letters from A. Lee, Esq.<sup>a</sup> and the communications of the Minister Plenipotentiary of France, in his memorial of the 9th and in the private audience on the 15 brought in a report, which was read:—

That upon consideration of all the matters referred to your committee, they are of opinion, that His Catholic Majesty is disposed to enter into an alliance with the United States of America.

That he hath manifested this disposition in a decisive declaration lately made to the Court of Great Britain.

That in consequence of such declaration the independence of these United States must be finally acknowledged by Great Britain; and immediately thereon a negotiation for peace will be set on foot between the Powers of France, Great Britain, and these United States, under the mediation of His Catholic Majesty: Or,

That Spain will take part in the war, and His Catholic Majesty will unite his force with the Most Christian King and the United States.

That in the event of a negotiation for peace, your committee, pursuant to the declaration of Congress, that they would not make, nor even treat of peace, until the independence of these United States should be acknowledged, or all the forces of their enemy withdrawn, pursuant to the guarantee of His Most Christian Majesty by the treaty of alliance eventual and defensive, made and subsisting between him and these United States, as sovereign and independent—they assume it, first, as a ground and preliminary, that, previous to any treaty, or negotiation for peace, the liberty, sovereignty, and independence, absolute and unlimited, of these United States, as well in matters of government as of commerce, shall be acknowledged on the part of Great Britain. And if the same shall be done, your committee are of opinion that the Ministers of these United States ought, on the part of the said States, to assist at, and contract and stipulate in such negotiation for peace as may be set on foot under the mediation of His Catholic Majesty.

That in order to be in readiness for such event, the said Ministers ought to be instructed by Congress in the following particulars, to wit:

1. What to insist on as the ultimatum of these states; and,
2. What to yield, or require, on terms of mutual exchange or compensation.

On the first head your committee are of opinion, that the following articles are absolutely necessary for the safety and independence of the United States, and therefore ought to be insisted on as the ultimatum of these States:

1. That the bounds of the United States be acknowledged and ratified as follows:—

Northerly by the ancient limits of Canada, as contended for by Great Britain, running from Nova Scotia, south-westerly, west, and north-westerly, to Lake Nepissing, thence a west line to the Mississippi; easterly by the boundary settled between Massachusetts and

<sup>a</sup> Commissioner of the United States to the Courts of Vienna and Berlin.



Nova Scotia: southerly by the boundary settled between Georgia and East and West Florida; and westerly by the River Mississippi.<sup>a</sup>

2. That every post and place within the United States, and every island, harbour, and road, to them, or any of them, belonging, be absolutely evacuated by the land and sea forces of His Britannic Majesty, and yielded to the powers of the states to which they respectively belong. (Agreed.)

3. That a right of fishing and curing fish on the banks and coasts of the Island of Newfoundland, equally with the subjects of France and Great Britain, be reserved, acknowledged, and ratified to the subjects of the United States.<sup>b</sup>

4. That the navigation of the river Mississippi, as low down as the southern boundary of the United States, be acknowledged and ratified absolutely free to the subjects of the United States. (Agreed.)

5. That free commerce be allowed to the subjects of the United States with some port or ports below the southern boundary of the said states, on the river Mississippi, except for such articles as may be particularly enumerated; (rejected) and,

6. In case the allies of these United States will agree to support them in such claim, by continuing hostilities, then to insist that Nova Scotia and its dependencies be ceded to the United States, or declared independent. (Rejected.)

11

*Proceedings of Congress.*

On the second head, your committee are of opinion,

1. That the claim to Nova Scotia ought to be given up in lieu of the equal share in the Newfoundland fishery, or such share of the fishery in lieu of Nova Scotia, if both cannot be obtained. (Rejected.)

2. That in case neither of these can be obtained in lieu of the other, then, if the Bermuda Islands can be obtained, the claim to Nova Scotia be ceded in lieu thereof. (Rejected.)

3. That it may be stipulated, that the subjects of the United States shall not trade to the East Indies, or engage in the slave trade, if adequate compensation can be obtained. (Agreed.)

4. That the United States will not establish any settlement, or dominion, beyond the limits of the said States, as settled at the conclusion of the treaty of peace. (Agreed.)

5. That if Great Britain shall cede the Floridas to the United States, the same may be ceded to the Crown of Spain for an adequate compensation; and (agreed.)

6. A reciprocal guarantee of all American possessions which shall remain to the respective Powers at the conclusion of the treaty of peace. (Agreed.)

Your committee are further of opinion, that no truce ought to be agreed to on the part of the United States. That a cessation of hostilities, during the negotiation, may be admitted, in case all the force of the enemy shall be withdrawn from every post and place within the limits of the United States. That no exclusive privilege of commerce be allowed to Great Britain with the United States. And

<sup>a</sup> Against this paragraph is written: "Amendt to the whole postponed."

<sup>b</sup> Against this paragraph is written: "Proposed amendmt to the whole."

that all claims, not in the instructions mentioned, may be ceded, exchanged, or retained, as the circumstances of the negotiations may require. (Agreed.)

\* \* \* \* \*

1779. *March 1.* . . . Congress was resolved into a Committee of the Whole, and after some time, the President resumed the chair and Mr. F[rancis] L[ightfoot] Lee reported, that the committee have had under consideration the report of the committee on the communications of the Minister of France and made some farther progress, but not having come to a conclusion desire leave to sit again.

#### AMENDMENT A.<sup>a</sup>

[Sic.] That the thirteen United States are bounded: *North* by a line drawn from the northwest angle of the boundary of Nova Scotia along the high lands, which divide the rivers that empty themselves into the river St. Lawrence from those which fall into the Atlantic, to Connecticut River; thence down that river to the 45th degree of North Latitude; thence in that latitude to the River St. Lawrence; thence to the south end of the lake Nipissing and thence to the source of the Mississippi. *West*, by a line drawn along the middle of the River Mississippi from its source to that part of the said river which lies in latitude thirty one Degrees north from the Equator: *South*, by a line from the river Miss[iss]ippi in the beginning of the 31 degree of north latitude to the junction of the Catahouche and Flint rivers, thence by a line to the head of St. Mary's river; and thence by a line along the middle of St. Mary's river to the Atlantic Ocean.

Amendment to the first proposition.

#### AGREED TO IN COMMITTEE MARCH 1.

That the thirteen United States are bounded. *EAST* by the Atlantic ocean. *NORTH* by a line drawn from the north west angle of the boundary of Nova Scotia along the high lands, which divide the rivers that empty themselves into the river St. Lawrence from those which fall into the Atlantic, to Connecticut river, and then down that River to the 45th degree north Latitude; thence in that latitude to the River St. Lawrence; thence to the south end of the Lake Nipissing, and thence to the source of the Mississippi. *WEST*, by a line drawn along the middle of the river Mississippi, from its source to the 31st degree of North Latitude. *SOUTH* by a line drawn from the river Mississippi in the 31st degree of north latitude to the junction of the Catahouche and Flint Rivers, thence by a line to the head of St. Mary's river, and thence by a line along the middle of St. Mary's River to the Atlantic Ocean.

2d page, 6 line; dele *to the Mississippi* and insert *to the Western boundary of the United States*. Transpose the words (as contended for by Great Britain) and insert them immediately after Nipissing.

<sup>a</sup>A. By a line drawn thence due East to the River Apalachicola or Catahouche, thence to the junction thereof with the Flint River, thence in a straight line to the Head of

AMENDMENT B.<sup>a</sup>

*East*, by a line to be settled and adjusted between that part of the state of Massachusetts Bay, formerly called the Province of Maine, and the Province of Nova Scotia, agreeably to their respective rights.

AMENDMENT C.<sup>b</sup>

Comprehending all the Islands in the Atlantic Ocean lying contiguous to or within 20 leagues of any part of the shores of the United States from the north easterly limits on the sea of East Florida to the South westerly bounds on the sea of Nova Scotia.

12 In the 4th prop.: Strike out the words "as low down as the Southern boundary of the United States." Second head, prop. 3d: Strike out the words "if adequate compensation therefore can be obtained."

Page 3d, line 2d: from the bottom, strike out the words "six thousand."

Page 4th, line 3d: insert the words "and guaranteed," line 4th: strike out the words "and, the possessions and sovereignty thereof forever guaranteed."

*Resolved*. That on Wednesday Congress be resolved into a Committee of the Whole to consider farther the report of the Committee on communications, &c.

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1779, *March 17*. . . . Congress was resolved into a Committee of the Whole, and after some time, the President resumed the chair, and Mr. F[rancis] L[ightfoot] Lee reported that the committee have had under their farther consideration the report of the committee on the communications from the Minister of France, and have come to sundry resolutions thereon, which he was ready to report.

The report from the Committee of the Whole being read,

That the thirteen united states are bounded *North* by a line drawn from the north west angle of the boundary of Nova Scotia along the highlands, which divide the rivers that empty themselves into the river St. Lawrence from those which fall into the Atlantic to Connecticut river, thence down that river to the 45th degree of north latitude, thence in that latitude to the river St. Lawrence, thence to the south end of the lake Nipissing and thence to the source of the Mississippi. West, by a line drawn along the middle of the river Mississippi from its source to that part of the said river which lies in latitude 31 degrees north from the equator, then by a line drawn due east to the river Apalachicola or Catahouche, thence to the junction thereof with the flint river, thence in a strait line to the head of St. Mary's river, and thence by a line along the middle of St. Mary's river to the Atlantic Ocean: East by a line drawn along the middle of the river St. John from its mouth to its source or by

<sup>a</sup> B. *East*, by a line drawn along the middle of the River St. Johns from its source to its mouth or *By*

<sup>b</sup> C. Comprehending all Islands within twenty leagues of any part of the shores of the United States between lines drawn due East from the points where their boundary lines between Nova Scotia on the one part and Florida on the other part shall touch the Atlantic Ocean.

a line to be settled and adjusted between that part of the State of Massachusetts Bay formerly called the Province of Maine and the Province of Nova Scotia agreeably to their respective rights, comprehending all islands within twenty leagues of any part of the shores of the United States between lines drawn due East from the point, where their boundary lines between Nova Scotia on the one part, and Florida on the other part shall touch the Atlantic Ocean, Provided that if the line to be drawn from lake Nipissing to the head of the Mississippi cannot be obtained without continuing the war for that purpose then that a line or lines may be drawn more southerly so as not to be Southward of a line drawn in the 45th degree of north latitude—so far as the western shore of lake Michigan, nor to the south of 46 degrees of north latitude beyond that lake and so as to reserve the free navigation of the lakes Huron, Michigan and Superior to the subjects of the United States.

2. That every port and place within the United States and every island, harbour and road to them or any of them belonging be absolutely evacuated by the land and sea forces of his britannic Majesty and yielded to the powers of the States to which they respectively belong.

3. That a common right in these States to fish on the coasts, bays and banks of Nova Scotia, banks of Newfoundland, and gulph of St. Lawrence, coast of Labrador and streights of Bellisle, be acknowledged, and in case of refusal, that the war be continued unless the circumstances of our Allies shall be such as to render them utterly unable to assist in the prosecution of the war; in which case, as ample privileges in the fishery be insisted on as can possibly be obtained: That in case Great Britain should not be prevailed upon either to cede or declare Nova Scotia independent, the privilege of curing fish on the shores and in the harbours of Nova Scotia be required.<sup>a</sup>

4. That the navigation of the river Mississippi be acknowledged and ratified absolutely free to the subjects of the United States.

*Ordered,* That the consideration thereof be postponed till to morrow.

\* \* \* \* \*

1779, *March* 19.—Congress took into consideration the report of the committee of the whole, and agreed to the following ultmata:—

1. That the thirteen United States are bounded, north, by a line to be drawn from the north-west angle of Nova Scotia, along the high lands which divide those rivers which empty themselves into the River St. Lawrence from those which fall into the Atlantic Ocean to the north-westernmost head of Connecticut River;  
13 thence down along the middle of that river to the forty-fifth degree of north latitude; thence due west in the latitude forty-five degrees north from the equator, to the north-westernmost side of the River St. Lawrence, or Cadaraqui; thence straight to the south end of Lake Nipissing; and thence straight to the source of the River

<sup>a</sup> On folio 493 is a paper in the writing of John Jay, which appears to be the first form of this paragraph. The differences are: For "*common right*" read "*equal right*;" for "*coasts, bays and banks of*" read "*coasts of,*" and for "*continued unless,*" &c., read "*continued, unless our Allies shall absolutely refuse and threaten to make a separate peace.*"

Mississippi; west, by a line to be drawn along the middle of the River Mississippi from its source to where the said line shall intersect the latitude of thirty-one degrees north: south, by a line to be drawn due east from the termination of the line last mentioned in the latitude thirty-one degrees north from the equator to the middle of the River Apalachicola, or Catahouchie; thence along the middle thereof to its junction with the Flint River; thence straight to the head of St. Mary's River; thence down along the middle of St. Mary's River to the Atlantic Ocean; and east, by a line to be drawn along the middle of St. John's from its source to its mouth in the Bay of Fundy, or by a line to be settled and adjusted between that part of the State of Massachusetts Bay, formerly called the province of Maine, and the colony of Nova Scotia, agreeably to their respective rights, comprehending all islands within twenty leagues of any part of the shores of the United States, and lying between lines to be drawn due east from the points where the aforesaid boundaries between Nova Scotia on the one part, and East Florida on the other part, shall respectively touch the Bay of Fundy and the Atlantic Ocean. Provided, that if the line to be drawn from the mouth of Lake Nepissing to the head of the Mississippi cannot be obtained without continuing the war for that purpose, then, that a line or lines may be drawn more southerly, so as not to be southward of a line in latitude forty-five degrees north.

2. That every post and place within the United States, and every island, harbour, and road to them, or any of them belonging, be absolutely evacuated by the land and sea forces of His Britannic Majesty, and yielded to the powers of the states to which they respectively belong.

Adjourned to 10 o'clock to-morrow.

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1779, March 22. Congress resumed the consideration of the report of the committee of the whole; and the third resolution reported by the committee as one of the ultimata being under debate, and being in the words following:—

3. That a common right in these States to fish on the coasts, bays and banks of Newfoundland and Gulf of St. Lawrence, coast of Labrador and Straits of Belleisle, be acknowledged; and in case of refusal, that the war be continued, unless the circumstances of our allies shall be such as to render them utterly unable to assist in the prosecution of the war; in which case, as ample privileges in the fishery be insisted on, as can possibly be obtained:

That in case Great Britain should not be prevailed on either to cede or declare Nova Scotia independent, the privilege of curing fish on the shores and in the harbours of Nova Scotia be required—

In lieu thereof a substitute was moved by Mr. [Gouverneur] Morris, in the words following, viz.

That an acknowledgment be made by Great Britain of a common right in these states to fish on the coasts, bays and banks of Nova Scotia, the banks of Newfoundland and gulf of St. Lawrence, the coasts of Labrador and straits of Belleisle, and a stipulation for the right of curing fish on the shores of Nova Scotia. Provided always, that the allies of these states shall be in circumstances to support them in carrying on the war for such acknowledgment and stipulation; but that in no case, by any treaty of peace, the common right of fishing as above described be given up.

The substitute being adopted, and under debate.

A motion was made by Mr. M. Smith, seconded by Mr. Burke, to strike out the words "*and a stipulation for the right of curing fish on the shores of Nova Scotia,*" and also the words "*and stipulation*" after the word "acknowledgment."

And on the question, Shall those words stand, the yeas and nays being required by Mr. M. Smith . . .<sup>a</sup>

So it passed in the negative, and the words were struck out.

A motion was then made by Mr. Drayton, seconded by Mr. G. Morris, to strike out the words, "*provided always, that the allies of these states shall be in circumstances to support them in carrying on the war for such acknowledgment.*"

And on the question, Shall those words stand, the yeas and nays being required by Mr. Drayton, . . .<sup>b</sup>

So it was resolved in the affirmative.

A division was then called for; and on the question to agree to the first part as amended, including the proviso, the yeas and nays being required by Mr. Ellery, . . .<sup>c</sup>

So it was resolved in the affirmative.

On the question to agree to the second part,

*Resolved*, in the affirmative.

14 The article as amended and agreed to is as follows:—

3. That an acknowledgment be made by Great Britain of a common right in these States to fish on the coasts, bays and banks of Nova Scotia, the banks of Newfoundland, and gulf of St. Lawrence, the coasts of Labrador and straits of Belleisle. Provided always, that the allies of these States shall be in circumstances to support them in carrying on the war for such acknowledgment; but in no case, by any treaty of peace, the common right of fishing as above described be given up.

Adjourned to 10 o'clock to-morrow.

\* \* \* \* \*

1779, March 24. . . . On motion of Mr. Gerry,

*Resolved*,—That the third article be reconsidered. The article was then read as follows:—

That an acknowledgment be made by Great Britain of a common right in these states to fish on the coasts, bays and banks of Nova Scotia, the banks of Newfoundland and gulf of St. Lawrence, the coasts of Labrador and straits of Belleisle: Provided always, that the allies of these states shall be in circumstances to support them in carrying on the war for such acknowledgment; but that in no case, by any treaty of peace, the common right of fishing as above described be given up.

Whereupon a motion was made by Mr. Burke, seconded by Mr. —, to strike out the words between "to fish" and "provided," and in lieu thereof, to insert "on all and singular the fishing banks to the eastward of the Island of Cape Breton and of Nova Scotia, which by the treaties of Utrecht and of Paris were ceded to the King of Great Britain, in exclusion of the subjects of France."

A motion was made by Mr. R. H. Lee, seconded by Mr. Dyer, as a substitute to the whole,—

That the right of fishing on the coasts and banks of North America be reserved to the United States as fully as they enjoyed the same when subject

<sup>a</sup> A vote was taken. Noes 7. Ayes 2.

<sup>b</sup> A vote was taken. Ayes 6. Noes 5.

<sup>c</sup> A vote was taken. Ayes 9. Noes 1.

to the King of Great Britain, excepting always what shall have been excepted by the treaty of Paris between France and the United States—the whole to be explained by the treaties of Utrecht and Paris with Great Britain, and of Paris with the United States of North America.

On the question, Shall this be received as a substitute, the yeas and nays being required by Mr. Gerry . . . \*

So the substitute was received; and the article as heretofore agreed to, and the amendment proposed, were set aside.

\* \* \* \* \*

1779, *May 8*. . . . According to order, Congress resumed the consideration of the report of the committee of the whole; and the proposition under debate when the subject was last before Congress being read, to wit:—

That the right of fishing on the coasts and banks of North America be reserved to the United States as fully as they enjoyed the same when subject to the King of Great Britain, excepting always what shall have been excepted by the treaty of Paris between France and the United States, the whole to be explained by the treaties of Utrecht and of Paris with Great Britain, and of Paris with the United States of North America.

A substitute was moved by Mr. Morris, seconded by Mr. Burke, in the words following:—

Whereas this Congress did on the fourth day of July, 1776, declare the several colonies by them represented to be free and independent states, that they were absolved from all allegiance to the British crown, and that all political connection between them and the state of Great Britain was and ought to be totally dissolved; and that, as free and independent states, they had full power to levy war, conclude peace, contract alliances, establish commerce, and do all other acts and things which independent states might of right do; and for the support of that declaration, with a firm reliance on the protection of divine Providence, did mutually pledge to each other their lives, their fortunes, and their sacred honour.

And whereas this Congress did resolve on the 22nd day of April, 1778. That the said states could not with propriety hold any conference or treaty with any commissioners on the part of Great Britain, unless they should as a preliminary thereto, either withdraw their fleets and armies, or else in positive and express terms acknowledge the independence of the said states.

And whereas this Congress, in a letter of the 17th day of June, 1778, from their President to the British commissioners, signed by their unanimous consent, did declare themselves inclined to peace, and that they would be ready to enter upon the consideration of a treaty of peace and commerce not inconsistent with treaties already subsisting, when the King of Great Britain should demonstrate a sincere disposition for that purpose: And whereas it is agreed in the treaty of alliance between the Most Christian King and the United States, that neither of the parties should conclude either truce or peace with Great Britain without the formal consent of the other first obtained; and it is mutually engaged

15 that the said parties should not lay down their arms until the independence of the United States should have been formally or tacitly assured by the treaty or treaties that should terminate the war.

And whereas his Most Christian Majesty therein guarantees on his part, to the United States, their liberty, sovereignty, and independence, absolute and unlimited, as well in matters of government as of commerce.

And whereas from information lately received, it is probable that a treaty of peace may soon be set on foot on the preliminary acknowledgment of the independence of the said states: And whereas, considering the exhausted situation of the said states, the derangement of their finances, and the defect of their resources, it is highly expedient to put a stop to the present destructive war: Therefore,—

*Resolved*,—That this Congress will agree to a treaty of peace with Great Britain, provided the absolute and unlimited liberty, sovereignty and independence of these United States, as well in matters of government as of com-

merce, shall be thereby acknowledged and assured; and provided, that no terms or articles shall be therein contained which are inconsistent with, or repugnant to, the treaties already subsisting between the Most Christian King and these United States.

An objection was made to this, as being out of order. And on the question, "Is this substitute in order," the yeas and nays being received by Mr. Morris, . . .<sup>a</sup>

So it passed in the negative.

\* \* \* \* \*

1779, May 12. . . . Congress resumed the consideration under debate on the 8th instant; and the proposition being read, "That the right of fishing," &c.

A substitute was moved by Mr. Burke, seconded by Mr. Duane, in the words following, to wit:—

That the ministers of these United States be instructed on a negotiation for peace, to obtain for these United States an explicit acknowledgment of a common right to fish every where on the high seas, and as near the coasts of the territories which shall remain in the possession of Great Britain as is permitted to any other nation; provided always, that all exclusive rights to fishing of the allies of these United States shall not be affected by any such acknowledgment. And in case such acknowledgment shall be refused, and our allies can be prevailed on to assist in the prosecution of the war, no peace be agreed to on the part of these United States. But in case our allies shall not agree to assist in prosecuting the war, the said Ministers be instructed to consent to a peace without such acknowledgment; provided, that the claim of these states to such right of fishing shall, in no event, be given up.

After some debate, another substitute, in lieu of the whole, was moved by Mr. Morris, seconded by Mr. Smith, in the words following:—

That if the court of Great Britain shall immediately acknowledge the independence of the United States of America, then, that an equal share of the fisheries with Great Britain, as far as the same can be obtained consistently with the treaty of Paris between France and the United States, be required and insisted on; but that, if Great Britain shall continue to prosecute the present iniquitous and destructive war, then, that eventual engagements be taken to exclude her from the fisheries, and divide the same equally between France, Spain, and America.

A motion was made by Mr. Lee, seconded by Mr. Sherman, to strike out the words "that if the court of Great Britain shall immediately acknowledge the independence of the United States of America, then."

The question, Shall those words stand, passed in the negative; and the words were struck out.

Another amendment was moved by Mr. R. H. Lee, seconded by Mr. Gerry, to strike out the words "as far as the same can be obtained."

Adjourned to 10 o'clock to morrow.

1719, May 13. . . . The subject resumed, and on motion of Mr. Smith, seconded by Mr. Sherman,—

*Resolved*,—That the words "can be obtained" be struck out; and in their room the word "is" inserted; and that the word "consistently" be changed into "consistent."

The substitute being amended to read, "that an equal share of the fisheries with Great Britain, as far as the same is consistent with the treaty of Paris between France and the United States, be required and insisted on, but that if," &c. to the end.

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<sup>a</sup>A vote was taken. Noes 6. Ayes 3.



A motion was made by Mr. Gerry, seconded by Mr. Lee, to amend the first part as far as the words "insisted on," by substituting in lieu thereof the words following:—

That a common right with Great Britain to the fisheries on the coasts and banks of North America be required and insisted on, preserving inviolate the treaty of Paris between France and these United States.

16 To which it was moved by Mr. Duane, seconded by Mr. Drayton, to add, "provided our allies can be prevailed on to prosecute the war; but in no event shall the right or claim of these states to the said fisheries be yielded up or impaired."

A question being taken, Is this addition in order,  
Resolved in the affirmative.

An amendment to the proviso was moved by Mr. Dickinson, seconded by Mr. Penn, instead of the words "can be prevailed on to prosecute the war," to insert, "shall be in circumstances to prosecute the war with effect."

A question being taken, Is this amendment in order,  
Resolved in the affirmative.

On the question to agree to the amendment, the yeas and nays being required by Mr. Drayton, . . .<sup>a</sup>

So it passed in the negative.

\* \* \* \* \*

1779, *May 27*. . . Congress resumed the consideration of the subject under debate on the 12th and 13th instant; and after debating the substitute, as amended on the 13th, it was agreed by unanimous consent, That all substitutes and amendments to the third article, agreed to the 22nd of March last, be withdrawn.

On the motion of Mr. Smith, seconded by Mr. Laurens,  
*Resolved*,—That the said third article be repealed.

On the motion of Mr. Burke, seconded by Mr. Drayton,  
*Resolved*,—That, in no case, by any treaty of peace, the common right of fishery be given up.

Adjourned to 10 o'clock to morrow.

\* \* \* \* \*

1779, *June 3*. . . Congress resumed the consideration of the report on the communications from the Minister of France; and a motion was made by Mr. Gerry, seconded by Mr. Sherman, in the words following, to wit:—

To obviate any disputes which may arise respecting the fisheries, it shall be stipulated in the treaty of peace, that the citizens of these states and the subjects of the king of Great Britain be allowed the free and peaceable use and exercise of their common right of fishing on the banks of Newfoundland, and other banks and coasts of North America, as fully and freely as they did or might have done during their political connection.

Whereupon it was moved by Mr. Witherspoon, seconded by Mr. Laurens, to strike out the words "and the subjects of the king of Great Britain."

Question, Shall those words stand,  
Passed in the negative.

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<sup>a</sup>A vote was taken. Noes 6. Ayes 4.

A motion was made by Mr. Sherman, seconded by Mr. Spencer, to strike out the words, "as fully and freely as they did or might have done during their political connection."

Question, Shall these words stand,  
Passed in the negative.

It was then moved by Mr. Witherspoon, seconded by Mr. Laurens, to strike out the words "and coasts."

And on the question, Shall those words stand, the yeas and nays being required by Mr. Gerry, . . .<sup>a</sup>

So it passed in the negative, and the words were struck out.

A motion was made by Mr. Ellery, seconded by Mr. Witherspoon, after "other banks" to insert, "and in the sease;" which being amended to read "and seas"—

On the question, Shall the words "and seas" be inserted, the yeas and nays being required by Mr. Ellery, . . .<sup>a</sup>

So it passed in the negative.

The motion being amended to read, "To obviate any disputes which may arise respecting the fisheries, it shall be stipulated in the treaty of peace, that the citizens of these states shall be allowed the free and peaceable use and exercise of their common right of fishing on the banks of Newfoundland and other banks of North America."

When the house was ready for the question, the previous question was moved by Mr. Witherspoon, seconded by Mr. Scudder.

And on the question to agree to the previous question, the yeas and nays being required by Mr. Gerry, . . .<sup>b</sup>

So it was resolved in the affirmative; and the main question was set aside.

\* \* \* \* \*

1779, *June 19*. . . Congress resumed the consideration of the report on the communication, &c., when the following resolutions were moved by Mr. Gerry, seconded by Mr. Ellery,

1. That it is essential to the welfare of these United States that the inhabitants thereof, at the expiration of the war, should continue to enjoy the free and undisturbed exercise of their common right to fish on the banks of Newfoundland, and the other fishing banks and seas of North America, preserving inviolate the treaties between France and the said states.

2. That an explanatory article be prepared and sent to our minister plenipotentiary at the court of Versailles, to be by him presented to his most Christian Majesty, whereby the said common rights to the fisheries shall be more explicitly guaranteed to the inhabitants of these states than it already is by the treaties aforesaid.

3. That in the treaty of peace with Great Britain a stipulation be made, on their part, not to disturb the inhabitants of these states in the free exercise of their common rights to the fisheries aforesaid; and that a reciprocal engagement be made on the part of the United States.

4. That the faith of Congress be pledged to the several states, that, without their unanimous consent, no treaty of commerce shall be formed with Great Britain previous to such stipulation.

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<sup>a</sup> A vote was taken. Noes 8. Ayes 3.

<sup>b</sup> A vote was taken. Ayes 7. Noes 4.

5. That if the explanatory article should not be ratified by his most Christian Majesty, nor the stipulation aforesaid be adopted by Great Britain, the Minister conducting this business shall give notice thereof to Congress, and not sign any treaty of peace until their pleasure be known.

The first proposition being read, a motion was made by Mr. Morris, seconded by Mr. Drayton, to amend it by striking out certain words and inserting others, so that it read, "That it would be very injurious to these United States, and the inhabitants thereof, at the expiration of the war, not to enjoy the free, &c."

On the question, Shall the words, moved to be struck out, stand, the yeas and nays being required by Mr. Ellery, . . .<sup>a</sup>

So it was resolved in the affirmative.

A motion was then made by Mr. Morris, seconded by Mr. Smith, that the farther consideration of the first proposition be postponed. On which, the yeas and nays being required by Mr. Gerry, . . .<sup>b</sup>

So it passed in the negative.

A motion was then made by Mr. Burke, seconded by Mr. Duane, after the words "seas of North America," to insert, "within the restrictions of the law and custom of nations for preventing contraband." And on the question, Shall those words be inserted, the yeas and nays being required by Mr. Jay, . . .<sup>c</sup>

So it passed in the negative.

A motion was made by Mr. Morris, seconded by Mr. M'Kean, to strike out the words "preserving inviolate the treaties between France and the United States."

\* \* \* \* \*

1779, June 24. . . . On the question, Shall the words moved to be struck out, stand, the yeas and nays being required by Mr. Gerry, . . .<sup>d</sup>

So it was resolved in the affirmative.

A motion was made by Mr. Burke, seconded by Mr. Dickinson, after the words "North America," to insert, "As near the coasts of the territories which shall remain in the possession of other nations, after the conclusion of the present war, as is permitted to any free and independent people." And on the question to agree to this amendment, the yeas and nays being required by Mr. Gerry, . . .<sup>e</sup>

So it passed in the negative.

A motion was made by Mr. Burke, seconded by Mr. Drayton, to strike out the words "continue to." And on the question, "Shall the words stand," the yeas and nays being required by Mr. Gerry, . . .<sup>f</sup>

So it was resolved in the affirmative.

A motion was made by Mr. Dickinson, seconded by Mr. Carmichael, to insert the word "all," before "these United States." On which, the yeas and nays being required by Mr. Drayton, . . .<sup>g</sup>

So it was resolved in the affirmative.

On the question to agree to the proposition as amended, the yeas and nays being required by Mr. Ellery, . . .<sup>a</sup>

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<sup>a</sup> A vote was taken. Ayes 5. Noes 4.

<sup>b</sup> A vote was taken. Noes 5. Ayes 2.

<sup>c</sup> A vote was taken. Noes 6. Ayes 4.

<sup>d</sup> A vote was taken. Ayes 11.

<sup>e</sup> A vote was taken. Noes 6. Ayes 3.

<sup>f</sup> A vote was taken. Ayes 10. Noes 1.

So it was resolved, That it is essential to the welfare of all these United States, that the inhabitants thereof, at the expiration of the war, should continue to enjoy the free and undisturbed exercise of their common right to fish on the banks of Newfoundland, and the other fishing banks and seas of North America, preserving inviolate the treaties between France and the said states.

\* \* \* \* \*

1779, *July 1*. . . Congress proceeded to the consideration of the second proposition moved by Mr. Gerry.

A motion was made by Mr. Burke, seconded by Mr. Drayton, to strike out the words "explanatory," "more," "than it already is by the treaties aforesaid." And a division being called for by Mr.

Laurens,

18 On the question, Shall the word "explanatory" stand, the yeas and nays being required by Mr. Burke, . . .<sup>a</sup>

So it was resolved in the affirmative.

On the question, Shall the words "more," "than it already is by the treaties aforesaid," stand the yeas and nays being required by Mr. Drayton, . . .<sup>b</sup>

So it was resolved in the affirmative.

On the question to agree to the proposition, the yeas and nays being required by Mr. Gerry, . . .<sup>c</sup>

So it was—

*Resolved*,—That an explanatory article be prepared and sent to our minister plenipotentiary at the court of Versailles, to be by him presented to his most Christian Majesty, whereby the said common right to the fisheries shall be more explicitly guaranteed to the inhabitants of these states, than it already is by the treaties aforesaid.

The third proposition being read,

A motion was made by Mr. Burke, seconded by Mr. Drayton, to amend the same by adding,

Provided that if Great Britain will acknowledge and ratify the liberty, sovereignty and independence, absolute and unlimited, as well in matters of government as of commerce, of these United States, and agree to the other articles in the ultimatum resolved upon by Congress, the present war shall not be continued, notwithstanding Great Britain shall decline to make an express and particular acknowledgment of the right aforesaid.

\* \* \* \* \*

1779, *July 17*. . . Congress resumed the subject under debate the first of this month; and the third proposition and the amendment being read, a motion was made by Mr. Huntington, seconded by Mr. Drayton, that the farther consideration thereof be postponed.

On the question for postponing, the yeas and nays being required by Mr. Gerry, . . .<sup>d</sup>

So it was resolved in the affirmative.

The fourth proposition was then read, "That the faith of Congress be pledged to the several states, that, without their unanimous consent, no treaty of commerce shall be formed with Great Britain previous to such stipulation."

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<sup>a</sup> A vote was taken. Ayes 5. Noes 3.

<sup>b</sup> A vote was taken. Ayes 5. Noes 4.

<sup>c</sup> A vote was taken. Ayes 7. Noes 3.

<sup>d</sup> A vote was taken. Ayes 7. Noes 4.

A motion was made by Mr. Huntington, seconded by Mr. M'Kean, to amend the latter part so as to read, "no treaty of commerce shall be entered into, or any trade or commerce whatsoever carried on with Great Britain, without an explicit stipulation on her part, not to molest or disturb the inhabitants of the United States of America in taking fish on the banks of Newfoundland, and other fisheries in the American seas any where, excepting within the distance of three leagues of the shores of the territories remaining to Great Britain, at the close of the war, if a nearer distance cannot be obtained by negotiation."

\* \* \* \* \*

1779, July 22. . . . Congress proceeded in the consideration of the subject under debate on the 17th; and on the question to agree to the amendment,

Resolved in the affirmative.

A motion was then made by Mr. Burke, seconded by Mr. Smith, to strike out the words "without their unanimous consent."

And on the question, Shall those words stand, the yeas and nays being required by Mr. Gerry, . . .<sup>a</sup>

So it was resolved in the affirmative.

A motion was made by Mr. Burke, seconded by Mr. Dickinson, to amend the proposition by adding, "Provided, that this resolution shall not impede a treaty for concluding the present war."

On the question to agree to this amendment, the yeas and nays being required by Mr. Burke, . . .<sup>b</sup>

So it passed in the negative.

A motion was then made by Mr. Smith, seconded by Mr. Burke, to add, "Provided this resolution shall not be binding on any, unless a majority of the states in this union shall agree to make peace with Great Britain, according to the terms of the treaty of alliance with France."

On the question to agree to this amendment, the yeas and nays being required by Mr. Smith, . . .<sup>c</sup>

So it passed in the negative.

On the question to agree to the proposition as amended, the yeas and nays being required by Mr. Forbes, . . .<sup>d</sup>

So it was resolved in the affirmative,

That the faith of Congress be pledged to the several states, that without their unanimous consent, no treaty of commerce shall be entered into, or any trade or commerce whatever carried on with Great

19 Britain, without an explicit stipulation on her part not to molest or disturb the inhabitants of the United States of America in taking fish on the banks of Newfoundland and other fisheries in the American seas anywhere, excepting within the distance of three leagues of the shores of the territories remaining to Great Britain at the close of the war, if a nearer distance cannot be obtained by negotiation.

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1779, July 24. . . . Congress proceeded in the consideration of the subject under debate the 22d; and a motion was made by Mr. Dray-

<sup>a</sup> A vote was taken. Ayes 8. Noes 3.

<sup>b</sup> A vote was taken. Noes 10. Ayes 1.

<sup>c</sup> A vote was taken. Noes 8. Ayes 3.

<sup>d</sup> A vote was taken. Ayes 8. Noes 8.

ton, seconded by Mr. Burke, to reconsider the first proposition, passed the 24th June last, to the end that the description of the fishery therein may be altered so as to agree with the description in the fourth proposition as passed on the 22d of this month.

On the question, Shall the first proposition be reconsidered? the yeas and nays being required by Mr. Drayton, . . .<sup>a</sup>

So it passed in the negative.

A motion was made by Mr. Dickinson, seconded by Mr. Drayton, That it be resolved that the next preceding resolution is to be so understood, that if the fisheries therein described shall be effectually secured to these states by Great Britain, though not by the express stipulation therein mentioned, these states will agree to a treaty of commerce with that kingdom on just and reasonable terms.

When the question was about to be put, the previous question was moved by Mr. McKean, seconded by Mr. M'Lene.

And on the question to agree to the previous question, the yeas and nays being required by Mr. Drayton, . . .<sup>b</sup>

So it was carried in the affirmative, and the main question was set aside.

\* \* \* \* \*

1779, *July* 29. . . . The fifth proposition moved on the 19th June being read—

On the motion of Mr. Burke, seconded by Mr. Drayton,—

*Resolved*,—That the consideration thereof be postponed.

On motion of Mr. M'Kean, seconded by Mr. Huntington,—

*Resolved*,—That, if after a treaty of peace with Great Britain, she shall molest the citizens or inhabitants of any of the United States in taking fish on the banks and places described in the resolution passed the 22d day of July, instant, such molestation (being in the opinion of Congress a direct violation and breach of the peace) shall be a common cause of the said states; and the force of the union be exerted to obtain redress for the parties injured.

On the question to agree to this, the yeas and nays being required by Mr. Smith, . . .<sup>c</sup>

So it was resolved in the affirmative.

\* \* \* \* \*

1779, *July* 31. . . . The subject being again resumed, a motion was made by Mr. Gerry, seconded by Mr. Marchant, to take into consideration the third proposition, moved on the 19th June, which was postponed on the 17th instant.

And on the question to agree to this, the yeas and nays being required by Mr. Gerry, . . .<sup>d</sup>

So it passed in the negative.

Congress then proceeded to the consideration of the report of the committee on the letter from Mr. Lee, and the communications of the minister of France; and the preliminary article being read, viz. "That previous to any treaty, or negotiation for peace, the liberty, sovereignty, and independence of these United States, as well in matters of government as of commerce, be acknowledged on the part of Great Britain,"

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<sup>a</sup> A vote was taken. Noes 7. Ayes 4.

<sup>b</sup> A vote was taken. Ayes 7. Noes 4.

<sup>c</sup> A vote was taken. Ayes 8. Noes 4.

<sup>d</sup> A vote was taken. Noes 8. Ayes 4.

A motion was made by Mr. Burke, seconded by Mr. Duane, after the word "acknowledged," to insert the words "or tacitly assured."

And on the question to agree to this amendment, the yeas and nays being required by Mr. Gerry . . . \*

So it passed in the negative.

\* \* \* \* \*

1779, August 3. . . Congress resumed the consideration of the preliminary article; and on motion of Mr. Burke, seconded by Mr. Duane,

*Resolved*,—That the word "acknowledged" be expunged; and that in lieu thereof the word "assured" be inserted. And that after "Great Britain" be inserted the words, "agreeable to the eighth article of the treaty of alliance between his most christian majesty and these United States."

And on the question,

*Resolved*, N.D.C.,—That previous to any treaty, or negotiation for peace, the liberty, sovereignty, and independence, absolute and unlimited, of these 20 United States, as well in matters of government, as of commerce, shall be assured on the part of Great Britain, agreeable to the treaty of alliance between his most christian majesty and the United States.

And if the same shall be done,

*Resolved*,—That the minister or ministers of these United States assist at, and contract and stipulate in such negotiation for peace, as may be set on foot under the mediation of his catholic majesty, or otherwise.

\* \* \* \* \*

Wednesday, August 4, 1779. . . The committee, to whom were referred the letters from A. Lee, Esq. and the communications of the Minister plenipotentiary of France, in his memorial of the 9th, and in the private audience of the 15 February, brought in a report; Whereupon,

*Resolved*, That previous to any treaty or negotiation for peace, the liberty, sovereignty and independence absolute and unlimited of these United States, as well in matters of government as of commerce, shall be assured on the part of Great Britain, agreeable to the eighth article of the Treaty of Alliance between his most Christian Majesty and these United States. And if the same shall be done,

*Resolved*, That the minister or ministers of these United States assist at, and contract and stipulate in, such negotiation for peace as may be set on foot under the mediation of his Catholic Majesty, or otherwise.

That in the negotiations the following ultimatum be insisted on :

1. That the thirteen United States are bounded: North, by a line to be drawn from the northwest angle of the boundary of Nova Scotia, along the high lands which divide the rivers that empty themselves into the river St. Lawrence, from those which fall into the Atlantic, to Connecticut river, thence down that river to the 45 degree of north latitude, thence in that latitude to the river St. Lawrence, thence to the south end of lake Nipissing, and thence to the source of the Mississippi; West, by a line drawn along the middle of the river Mississippi from its source to that part of the said river which lies in latitude 31 degrees north from the equator; thence south, by a line drawn due east to the river Apalachicola or Catahouche, thence to the junction thereof with the Flint river, thence in a straight line to the head of St. Mary's, and thence by a line along the middle of St. Mary's river to the Atlantic ocean; East, by a line drawn along the middle of St. John's from its mouth to its source, or by a line to be settled and adjusted between that part of the state of Massachusetts bay, formerly called the province of Maine, and the colony of Nova Scotia, agreeably to their respective rights, comprehending all islands within twenty leagues of any part of the shores of the United States, between lines drawn due east from the points where their boundary lines between Nova Scotia on the one part and Florida on the other part shall touch the Atlantic Ocean; provided, that if the

\* A vote was taken. Noes 7. Ayes 4.

line to be drawn from Lake Nipissing to the head of the Mississippi cannot be obtained without continuing the war for that purpose, then, that a line or lines may be drawn more southerly so as not to be southward of a line in latitude 45 north.

2. Every post and place within the United States, and every island, harbour and road to them, or any of them belonging, be absolutely evacuated by the land and sea forces of his Britannic Majesty, and yielded to the powers of the States to which they respectively belong.

3. That in no case by any treaty of peace, the common right of fishing be given up.

*Resolved*, That a cessation of hostilities during the negotiation may be agreed to, but not without the consent of our ally, nor unless it shall be previously stipulated that all the forces of the enemy shall be immediately withdrawn from the United States.

*Resolved*, That it is essential to the welfare of all these United States that the inhabitants thereof, at the expiration of the war, should continue to enjoy the free and undisturbed exercise of their common right to fish on the banks of Newfoundland, and the other fishing banks and seas of North America, preserving inviolate the treaties between France and the said States.

*Resolved*, That an explanatory article be prepared and sent to our minister plenipotentiary at the court of Versailles, to be by him presented to his most Christian Majesty, whereby the said common right to the fisheries shall be more explicitly guaranteed to the inhabitants of these States than it already is by the treaties aforesaid.

*Resolved*, That the faith of Congress be pledged to the several States that without their unanimous consent, no treaty of commerce shall be entered into, nor any trade or commerce whatsoever carried on with Great Britain, without an explicit stipulation on her part not to molest or disturb the inhabitants of the United States of America in taking fish on the banks of Newfoundland and other fisheries in the American seas any where, excepting within the distance of three leagues of the shores of the territories remaining to Great Britain at the close of the war, if a nearer distance cannot be obtained by negotiation.

*Resolved*, That if after a treaty of peace with Great Britain, she shall molest the citizens or inhabitants of any of the United States in taking fish on the banks and places described in the last foregoing resolution, such molestation being, in the opinion of Congress, a direct violation and breach of the peace, shall be a common cause of the said States, and the force of the union be exerted to obtain redress for the parties injured.

21

### *Proceedings of Congress.*

The committee appointed to prepare a commission for the minister plenipotentiary to be appointed to negotiate a treaty of peace brought in a draught, which was read;

*Ordered*, That the same be taken into consideration to-morrow.

*Resolved*, That a committee of five be appointed to prepare instructions for the minister plenipotentiary of these United States, to be appointed for negotiating a peace.

The members chosen, Mr. [Gouverneur] Morris, Mr. [Henry] Laurens, Mr. [Samuel] Huntington, Mr. [John] Dickinson, and Mr. [Thomas] McKean.

Adjourned to 10 o'clock to morrow.

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1779, August 5. . . . Congress proceeded to the consideration of the report of the committee on the letters from A. Lee, Esq., and the communications of the Minister Plenipotentiary of France, and some time being spent thereon,

Congress resumed the consideration of the report of the committee on the letters from Mr. Lee, and communications of the minister of France. And on motion of Mr. [Thomas] M'Kean, seconded by Mr. [Gouverneur] Morris.

*Resolved*,—That so much of the said report as relates to the obtaining a subsidy from Spain be postponed.



A motion was then made by Mr. [Thomas] M'Kean, seconded by Mr. [Gouverneur] Morris,

That, if contrary to the humane wishes of the United States, Great Britain should obstinately persist in the prosecution of the present unjust war, the minister plenipotentiary of these United States be instructed and empowered to consult on, prepare and conclude, with the Ministers of his most christian and of his catholic majesty, a treaty or treaties, offensive and defensive; in which offensive treaty, nevertheless, he shall insert, on the part of these states, a proper article or articles for obtaining Canada, Nova Scotia, and the islands of Bermuda; and an equal share in, and full acknowledgment of the equal common right of these states to the fisheries.

A motion was made by Mr. [John] Mathews, seconded by Mr. [Thomas] Burke, after the word "Bermuda," to insert "the Floridas."

On the question to agree to this amendment, the yeas and nays being required by Mr. [John] Mathews . . .<sup>a</sup>

So it was resolved in the affirmative.

A motion was made by Mr. [Meriwether] Smith, seconded by Mr. [Thomas] Burke, to insert after "Floridas," the words "the free navigation of the river Mississippi."

On the question to agree to this amendment, the yeas and nays being required by Mr. [Meriwether] Smith . . .<sup>b</sup>

So it was resolved in the affirmative.

\* \* \* \* \*

1779, August 7. . . . Congress proceeded to the consideration of the report of the committee on the letters from A. Lee, Esq. and the communications of the Minister Plenipotentiary of France, and some time being spent thereon,

Congress resumed the consideration of the proposition under debate on the 5th; and the same, as amended, being set aside by the previous question, a motion was made by Mr. [Gouverneur] Morris, seconded by Mr. [Thomas] Burke,

That, if contrary to the humane wishes of the United States, Great Britain should obstinately persist in the prosecution of the present unjust war, the Minister of these United States be empowered and directed to solicit a subsidy from his Catholick Majesty, and to consult with the Ministers of the said King, and of his most Christian Majesty, and with them prepare such article or articles of treaty, as the situation and conjuncture of affairs may render necessary; and transmit the same to Congress for their consideration.

After debate, a motion was made by Mr. [Thomas] Burke, seconded by Mr. [Gouverneur] Morris, to strike out the words "and of his most christian majesty, and with them prepare such article or articles as the situation and conjuncture of affairs may render necessary," and in lieu thereof to insert, "on the consideration which he may be willing to receive from the United States in return for such subsidy." And on the question, Shall the words moved to be struck out, stand, the vote passed in the negative.

On the question, Shall the words moved, be inserted, the yeas and nays being required by Mr. [Elbridge] Gerry . . .<sup>c</sup>

So it was resolved in the affirmative.

\* \* \* \* \*

<sup>a</sup> A vote was taken. Ayes 8. Noes 2.

<sup>b</sup> A vote was taken. Ayes 7. Noes 3.

<sup>c</sup> A vote was taken. Ayes 9. Noes 3.

1779, August 13. . . . Congress proceeded to the consideration of foreign affairs, and some time being spent thereon,

22

*Proceedings of Congress.*

The committee appointed to prepare instructions for the Minister Plenipotentiary of the United States to be appointed for negotiating a peace, brought in a draft which was taken into consideration, and debated by paragraphs, was on Saturday, August 14, 1779, unanimously agreed to as follows: [Sic.]

Adjourned to 10 o'Clock to Morrow.

1779, August 14. . . . Some time being spent in the consideration of foreign affairs,

Your Committee to whom were referred the Resolutions of Congress upon the letters of Arthur Lee, Esq. and the communications of the Minister of France, with order to prepare instructions thereon, beg leave to Report:

That having weighed and considered the matters to them referred there appears to be four principal points, viz. 1st the instructions to be given to the Commissioner of peace. 2ly Those to be given to the Commissioners who may be appointed to negotiate a treaty of Commerce with Great Britain. 3ly Those to be given to the Minister of the United States at the Court of Versailles. And 4ly those to be given to the Minister of the Said States at the Court of Madrid.

Your Committee have prepared the first three sets of instructions agreeably to the materials in their possession, but cannot perform the last until the final determinations of Congress upon that subject. Wherefore they report:

I.

A draft of Instructions to the Commissioner to be appointed to negotiate a treaty of Peace with Great Britain.

SIR:—You will herewith receive a commission giving you full powers to negotiate a treaty of peace with Great Britain, in doing which you will conform to the following Information and Instructions:

1st. The United States are sincerely desirous of peace, and wish by every means consistent with their dignity and safety to spare the farther effusion of blood. They have therefore, by your Commission and those instructions, laboured to remove the obstacles to that event before the enemy have evidenced their disposition for it. But as the great object of the present defensive war on the part of the allies is to establish the Independence of the United States, and as any treaty whereby this end cannot be obtained must be only ostensible and illusory, you are therefore to make it a preliminary article to any negotiation that Great Britain shall agree to treat with the United States as Sovereign, free, and Independent.

In debating this article on Friday, the 13th, a motion was made by Mr. [Thomas] Burke, seconded by Mr. [Edmund] Randolph, after the words "as sovereign, free, and independent," to add, "if an express acknowledgement of the said independence shall be absolutely refused by the "King of Great Britain." And on the question to agree to this amendment, the yeas and nays being required by Mr. [Thomas] Burke, . . .<sup>a</sup>

So it passed in the negative.

2ly. You shall take especial care also that the Independence of the Said States be effectually assured and confirmed by the Treaty or treaties of peace, according to the form and effect of the Treaty of Alliance with his Most Christian Majesty, and you shall not agree to such treaty or treaties, unless the same be thereby so assured and confirmed.

<sup>a</sup> A vote was taken. Noes. 9. Ayes 3.

3ly. The Boundaries of these States are as follows, viz. These States are bounded NORTH by a line to be drawn from the Northwest angle of Nova Scotia, along the Highlands which divide those Rivers which empty themselves into the River St. Lawrence from those which fall into the Atlantic Ocean, to the Northwesternmost Head of Connecticut River; thence down along the middle of that River to the forty fifth degree of North latitude; thence due west in the latitude of forty five degrees North from the Equator to the North Westernmost side of the River St. Lawrence, or Cadaraqui; Thence straight to the South end of Lake Nipissing, and thence Straight to the Source of the River Mississippi; WEST by a line to be drawn along the middle of the River Mississippi from its source to where the said line shall intersect the 31st degree of North Latitude. SOUTH by a line to be drawn due East from the termination of the line last mentioned in the latitude of 31 Degrees north from the Equator, to the middle of the River Appalachicola or Catahouche; thence along the middle thereof to its junction with the Flint River; thence straight to the Head of St. Mary's River and thence down along the middle of St. Mary's River to the Atlantic Ocean, and EAST by a line to be drawn along the middle of St. John's River from its source to its mouth in the Bay of Fundy. Comprehending all Islands within twenty leagues of any part of the shores of the United States, and lying between lines to be drawn due East from the points where the aforesaid Boundaries between Nova Scotia on the one part and East Florida on the other part shall respectively touch the Bay of Fundy and Atlantic ocean. You are therefore strongly [to] contend that the whole of the said Countries and Islands lying within the Boundaries aforesaid, and every citadel, fort, post, place, harbour and road to them belonging, be absolutely evacuated by the land and sea forces of his Britannic Majesty, and yielded to the powers of the States to which they respectively belong, in such situation as they may be at the termination of the war. But notwithstanding the clear right of these

States, and the importance of the object, yet they are so much influenced by the dictates of Religion and Humanity, and so desirous of complying with the earnest requests of their allies, that if the line [to] be drawn from the mouth of the Lake Nipissing to the Head of the Mississippi cannot be obtained without continuing the war for that purpose, you are hereby empowered to agree to some other line between that point and the River Mississippi, provided the same shall in no part thereof be to the Southward of latitude 45° North. And in like manner if the Eastern Boundary above described cannot be obtained, you are hereby empowered to agree that the same shall be afterwards adjusted by Commissioners to be duly appointed for that purpose according to such line as shall be by them settled and agreed on as the Boundary between that part of the State of Massachusetts Bay formerly called the Province of Maine and the Colony of Nova Scotia agreeably to their respective rights, and you may also consent that the Enemy shall destroy such fortifications as they may have erected.

Fourthly. Although it is of the utmost importance to the peace and Commerce of the United States that Canada and Nova Scotia should be ceded, and more particularly that their equal common right to the Fisheries should be guaranteed to them, yet a desire of terminating the war hath induced us not to make the acquisition of these objects an ultimatum on the present occasion.

Fifthly. You are empowered to agree to a cessation of Hostilities during the negotiation, provided our ally shall consent to the same, and provided it shall be stipulated that all the forces of the enemy shall be immediately withdrawn from the United States.

Sixthly. In all other matters not above mentioned, you are to govern yourself by the Alliance between his Most Christian Majesty and these States, by the advice of our allies, by your knowledge of our Interests, and by your own discretion, in which we repose the fullest confidence.

Congress likewise agreed to the following draft of instructions to the commissioner to be appointed to negotiate a treaty of commerce with Great Britain;

## II.

SIR,—You will herewith receive a Commission giving you full power to negotiate a treaty of Commerce with Great Britain: in doing which you will consider yourself bound by the following information and instructions:—

First. You will govern yourself principally by the Treaty of Commerce with His Most Christian Majesty, and as on the one hand you shall grant no privi-

lege to Great Britain not granted by that Treaty to France, so on the other you shall not consent to any peculiar restrictions or limitations whatever in favour of Great Britain.

Secondly. In order that you may be the better able to act with propriety on this occasion, it is necessary for you to know that we have determined 1st That the common right of fishing shall in no case be given up. 2nd That it is essential to the welfare of all these United States that the Inhabitants thereof at the expiration of the war should continue to enjoy the free and undisturbed exercise of their common right to fish on the Banks of Newfoundland, and the other fishing banks and seas of North America, preserving inviolate the Treaties between France and the Said States. 3ly That application shal. be made to his Most Christian Majesty to agree to some article or articles for the better securing to these States a share in the said fisheries. 4ly. That if after a treaty of peace with Great Britain she shall molest the Citizens or Inhabitants of any of the United States in taking Fish on the Banks and places hereinafter described, such molestation, being in our opinion a direct violation and breach of the peace, shall be a common cause of the said States, and the force of the Union be exerted to obtain redress for the parties injured. And 5ly That our faith be pledged to the several States, that without their unanimous consent no treaty of commerce shall be entered into, nor any trade or commerce whatever carried on with Great Britain, without the explicit stipulation herein after mentioned. You are therefore not to consent to any Treaty of Commerce with Great Britain without an explicit stipulation on her part not to molest or disturb the Inhabitants of the United States of America in taking fish on the Banks of Newfoundland, and other fisheries in the American Seas any where, excepting within the distance of three leagues of the Shores of the Territory remaining to Great Britain at the close of the war, if a nearer distance cannot be obtained by negotiation—and in the negotiation you are to exert your most strenuous endeavours to obtain a nearer distance in the Gulf of St. Lawrence, and particularly along the shores of Nova Scotia. As to which latter we are desirous, that even the Shores may be occasionally used for the purpose of carrying on the Fisheries by the Inhabitants of these States.

3ly. In all other matters you are to govern yourself by your own discretion, as shall be most for the Interest of these States, taking care that the said Treaty be founded on principles of equality and reciprocity, so as to conduce to the mutual advantage of both nations, but not to the exclusion of others.

On the question to agree to the above draft of instructions, the yeas and nays being required by Mr. [Nathaniel] Scudder, . . .<sup>a</sup>

So it was resolved in the affirmative.

## 24

*Proceedings of Congress.*

Congress farther agreed to the following draft of instructions to the minister plenipotentiary of the United States at the court of France.

## III.

SIR,—Having determined, in order to put a period to the present war conformably to the humane dispositions which sway the Allied Powers, that we would not insist on a direct acknowledgment by Great Britain of our right in the Fisheries, this important matter is liable to an incertitude which may be dangerous to the political and commercial Interests of the United States. We have therefore agreed and resolved that our right should in no case be given up; that we would not form any Treaty of Commerce with Great Britain, nor carry on any trade or Commerce whatsoever with her unless she shall make an express stipulation on that subject, and that if She shall after a Treaty of peace disturb the Inhabitants of these States in the exercise of it, we will make it a common cause to obtain redress for the parties injured. But notwithstanding these precautions, as Great Britain may again light up the flames of war and use our exercise of the Fisheries as her pretext, and since doubts may arise whether this object is so effectually guarded by the Treaty of Alliance with his Most Christian Majesty that any molestation therein on the part of Great Britain is to be considered as a *casus federis*, you are to endeavour to obtain

<sup>a</sup>A vote was taken. Ayes 5. Noes 4.

of His Majesty an explanation on that subject upon the principle that, notwithstanding the high confidence reposed in his wisdom and justice, yet considering the uncertainty of human affairs and how doubts may be afterwards raised in the breasts of his Royal Successors, the great importance of the Fisheries renders the Citizens of these States very solicitous to obtain His Majesty's sense with relation to them as the best security against the ambition and rapacity of the British Court. For this purpose you shall propose the following article, in which nevertheless such alterations may be made as the circumstances and situation of affairs shall render convenient and proper. Should the same be agreed to and executed you are immediately to transmit a Copy thereof to our Minister at the Court of Spain.

Whereby, by the Treaty of Alliance between the most Christian King, and the United States of North America, the two parties guarantee mutually from that time and forever against all other powers, to wit: The United States to His Most Christian Majesty the possessions then appertaining to the Crown of France in America, as well as those which it might acquire by the future treaty of Peace; and His Most Christian Majesty guarantees on his part to the United States their liberty, Sovereignty and Independence, absolute and unlimited, as well in matters of Government as commerce, and also their possessions and the additions or conquests that their confederation might obtain during the war according to the Said Treaty. And the said parties did further agree and declare that in case of a rupture between France and England the said reciprocal guarantee should have its full force and effect the moment such war should break out—And whereas doubts may hereafter arise how far the said guarantee extends to this case, to wit: that Great Britain should molest or disturb the subjects and Inhabitants of France or of the said States in taking fish on the Banks of Newfoundland, and other the fishing banks and Seas of North America formerly and usually frequented by the said subjects and Inhabitants respectively. And whereas the said King and the United States have thought proper to determine with precision the true intent and meaning of the said guarantee in this respect, now therefore, as a further demonstration of their mutual good will and affection, it is hereby agreed, concluded and determined as follows, to wit: That if, after the conclusion of the treaty or treaties which shall terminate the present war, Great Britain shall molest or disturb the subjects or Inhabitants of the said United States in taking fish on the Banks, seas and places formerly used and frequented by them, so as not to encroach on the territorial rights which may remain to her after the termination of the present war as aforesaid, and war should thereupon break out between the said United States and Great Britain; or if Great Britain shall molest or disturb the subjects and Inhabitants of France in taking Fish on the Banks, Seas and places formerly used and frequented by them, so as not to encroach on the territorial rights of Great Britain as aforesaid, and war should thereupon break out between France and Great Britain. In either of those cases of war as aforesaid, His Most Christian Majesty and the said United States shall make it a common cause, and aid each other mutually with their good offices their counsels and their forces, according to the exigence of conjunctures as becomes good and faithful allies. Provided always, that nothing herein contained shall be taken or understood as contrary to or inconsistent with the true intent and meaning of the treaties already subsisting between his Most Christian Majesty and the Said States; but the same shall be taken and understood as explanatory of and conformable to those treaties.

All which nevertheless is most humbly submitted

GOUVE. MORRIS,  
*Chairman of the Comte.*

PHILADELPHIA 12th Aug. 1779.

On debating these instructions by paragraphs, when the question was about to be put to agree to this clause [*sic*], the yeas and nays being required by Mr. [Meriwether] Smith, . . .<sup>a</sup>

So it was resolved in the affirmative.

\* \* \* \* \*

25 1779. September 27. . . . *Resolved*, That Congress proceed to the election of a minister plenipotentiary for negotiating a treaty of peace and a treaty of commerce with Great Britain.

<sup>a</sup>A vote was taken Ayes 9. Noes 2.

Congress accordingly proceeded, and the ballots being taken, Mr. John Adams was elected.

Adjourned to 10 o'Clock to Morrow.

1779. September 28. . . . The committee, consisting of Mr. [John] Dickinson, Mr. [Gouverneur] Morris, and Mr. [Henry] Marchant, appointed to prepare drafts of commissions, reported the same, which were agreed to as follows:

For the minister plenipotentiary to negotiate a treaty of peace.

The Delegates of the United States of New Hampshire, Massachusetts Bay, Rhode Island and Providence Plantations, Connecticut, New York, New Jersey, Pennsylvania, Delaware, Maryland, Virginia, North Carolina, South Carolina, and Georgia—To all who shall see these presents, send greeting.

It being probable that a negotiation will soon be commenced for putting an end to the hostilities between His Most Christian Majesty and these [United] States, on the one part, and his Britannick Majesty on the other part; and it being the sincere desire of the United States that they may be terminated by a peace, founded on such solid and equitable principles as reasonably to promise a permanency of the blessings of tranquillity: KNOW YE, THEREFORE, That we, confiding in the integrity, prudence and ability of have nominated and constituted, and by these presents do nominate and constitute him the said our minister plenipotentiary, giving him full power, general and special, to act in that quality, to confer, treat, agree and conclude, with the ambassadors or plenipotentiaries of his Most Christian Majesty, and of his Britannick Majesty, and those of any other princes or states whom it may concern, vested with equal powers, relating to the re-establishment of peace and friendship; and whatever shall be so agreed and concluded, for us, and in our name to sign, and thereupon to make a treaty or treaties, and to transact every thing that may be necessary for completing, securing and strengthening the great work of pacification, in as ample form, and with the same effect, as if we were personally present and acted therein; hereby promising, in good faith, that we will accept, ratify fulfil and execute whatever shall be agreed, concluded and signed by our said minister plenipotentiary; and that we will never act nor suffer any person to act contrary to the same, in the whole or in any part.

In witness whereof we have caused these presents to be given in Congress, at Philadelphia, the day of in the year of our Lord, seventeen hundred and seventy-nine, and in the fourth year of the independence of the United States of America.

Signed by the President, and sealed with his seal.

For the minister plenipotentiary to negotiate a treaty of amity and commerce with Great Britain.

The Delegates of the United States of New Hampshire, &c. in Congress assembled—

To all who shall see these presents, send greeting.

It being the desire of the United States, that the peace which may be established between them and his Britannick majesty may be permanent, and accompanied with the mutual benefits derived from commerce: KNOW YE, THEREFORE, That we, confiding in the integrity, prudence and ability of have nominated and consti-

tuted, and by these presents do nominate and constitute him the said our minister plenipotentiary, giving him full power, general and special, to act in that quality, to confer, agree and conclude with the ambassador or plenipotentiary of his Britannick majesty, vested with equal powers, of and concerning a treaty of commerce; and whatever shall be so agreed and concluded for us and in our name, to sign, and thereupon make a treaty of commerce; and to transact every thing that may be necessary for completing, securing and strengthening the same, in as ample form, and with the same effect, as if we were personally present and acted therein; hereby promising, in good faith, that we will accept, ratify, fulfil and execute whatever shall be agreed, concluded and signed by our said minister plenipotentiary; and that we will never act, nor suffer any person to act, contrary to the same, in whole or in part. In witness whereof we have caused these presents to be given in Congress, at Philadelphia, the            day of            in the year of our Lord, 1779, and in the fourth year of the independence of the United States of America.

Signed by the President, and sealed with his seal.

\* \* \* \* \*

1779. *October 4. . . . Resolved*, that the like blanks in the other two commissions, namely, for negotiating a treaty of peace, and for negotiating a treaty of commerce with Great Britain, be filled up with, "The honourable John Adams, esquire, late commissioner of the United States of America at the court of Versailles, late delegate in Congress from the state of Massachusetts Bay, and chief justice of the said state."

*Resolved*, That the commissions be dated the twenty-ninth day of September, 1779.

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26    No. 5.—1780, *October 17: Extract from Instructions of the United States Congress, explaining the reasons and principles on which the instructions to Mr. Jay of the 4th October were founded.*

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There is a remaining consideration respecting the navigation of the Mississippi which deeply concerns the maritime powers in general, but more particularly their most christian and catholick majesties. The country watered by the Ohio, with its large branches, having their sources near the lakes on one side, and those running north-westward and falling into it on the other side, will appear from a single glance on a map to be of vast extent. The circumstance of its being so finely watered, added to the singular fertility of its soil, and other advantages presented by a new country, will occasion a rapidity of population not easy to be conceived. The spirit of emigration has already shown itself in a very strong degree, notwithstanding the many impediments which discourage it. The principal of these impediments is the war with Britain, which cannot spare a force sufficient to protect the emigrants against the incursions of the savages.

In a very few years after peace shall take place, this country will certainly be overspread with inhabitants. In like manner as in all new settlements, agriculture, not manufactures, will be their employment. They will raise wheat, corn, beef, pork, tobacco, hemp, flax, and in the southern parts, perhaps, rice and indigo, in great quantities. On the other hand, their consumption of foreign manufactures will be in proportion, if they can be exchanged for the produce of their soil. There are but two channels through which such commerce can be carried on; the first is down the river Mississippi; the other is up the rivers having their sources near the lakes, thence by short portages to the lakes, or the rivers falling into them, and thence through the lakes and down the St. Lawrence. The first of these channels is manifestly the most natural, and by far the most advantageous. Should it however be obstructed, the second will be found far from impracticable. If no obstructions should be thrown in its course down the Mississippi, the exports from this immense tract of country will not only supply an abundance of all necessities for the West India islands, but serve for a valuable basis of general trade, of which the rising spirit of commerce in France and Spain will no doubt particularly avail itself. The imports will be proportionally extensive; and from the climate, as well as from other causes, will consist of the manufactures of the same countries. On the other hand, should obstructions in the Mississippi force this trade into a contrary direction through Canada, France and Spain, and the other maritime powers will not only lose the immediate benefit of it themselves, but they will also suffer by the advantage it will give to Great Britain. So fair a prospect could not escape the commercial sagacity of this nation. She would embrace it with avidity. She would cherish it with the most studious care. And should she succeed in fixing it in that channel, the loss of her exclusive possession of the trade of the United States might prove a much less decisive blow to her maritime pre-eminence and tyranny than has been calculated.

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No. 6.—1780, October 18: Resolution of United States Congress in reference to terms of peace.

1780, October 18.—On the report of a committee to whom were referred the letters of 23rd and 24th March last, from the honourable John Adams, minister plenipotentiary of the United States for negotiating a treaty of peace and a treaty of commerce with Great Britain,

Resolved, That the said minister be informed, it is clearly the opinion of Congress that a short truce would be highly dangerous to these United States.

That if a truce be proposed for so long a period, or for an indefinite period, requiring so long notice previous to a renewal of hostilities as to evince that it is, on the part of Great Britain, a virtual relinquishment of the object of the war, and an expedient only to avoid the mortification of an express acknowledgment of the independence and sovereignty of these United States, the said minister be at liberty, with the concurrence of our ally, to accede thereto; provided, the removal of the British land and naval armaments from the United States be a condition of it.

That in case a truce shall be agreed on by the belligerent parties, Congress rely on his attention and prudence to hold up the United States to the world



in a style and title not derogatory to the character of an independent and sovereign people.

That with respect to those persons who have either abandoned or been banished from any of the United States, since the commencement of the war, he is to make no stipulations whatsoever for their readmittance; and as to an equivalent for their property, he may attend to propositions on that subject only on a reciprocal stipulation, that Great Britain will make full compensation for all the wanton destruction which the subjects of that nation have committed on the property of the citizens of the United States.

That, in a treaty of peace, it is the wish of Congress not to be bound by any publick engagement to admit British subjects to any of the rights or privileges of citizens of the United States; but at all times to be at liberty to grant  
27 or refuse such favours, according as the publick interest and honour may dictate; and that it is their determination not to admit them to a full equality in this respect with the subjects of his most christian majesty, unless such a concession should be deemed by the said minister preferable to a continuance of the war on that account.

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No. 7.—1781, June 15: *Appointment of Messrs. Franklin, Jay, Laurens, and Jefferson, to assist Mr. Adams as Commissioners for Peace.*

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*The United States of America in Congress assembled to all to whom these presents shall come, send greeting:*

Whereas these United States, from a sincere desire of putting an end to the hostilities between his most Christian majesty and these United States on the one part, and his Britannic majesty on the other, and of terminating the same by a peace founded on such solid and equitable principles as reasonably to promise a permanency of the blessings of tranquility, did heretofore appoint the honorable John Adams, late a commissioner of the United States of America at the court of Versailles, late delegate in Congress from the State of Massachusetts, and chief justice of the said State, their minister plenipotentiary, with full powers, general and special, to act in that quality, to confer, treat, agree, and conclude with the ambassadors or plenipotentiaries of his most Christian majesty and of his Britannic majesty, and those of any other princes or states whom it might concern, relating to the re-establishment of peace and friendship; and whereas the flames of war have since that time been extended, and other nations and states are involved therein:

Now know ye that we, still continuing earnestly desirous, as far as it depends upon us, to put a stop to the effusion of blood, and to convince the powers of Europe that we wish for nothing more ardently than to terminate the war by a safe and honorable peace, have thought proper to renew the powers formerly given to the said John Adams, and to join four other persons in commission with him; and having full confidence in the integrity, prudence, and ability of the honorable Benjamin Franklin, our minister plenipotentiary at the court of Versailles, and the honorable John Jay, late President of Congress, and chief justice of the State of New York, and our minister plenipotentiary at the court of Madrid, and the honorable Henry Laurens, formerly President of Congress, and commissioned and sent as our agent to the United Provinces of the Low

Countries, and the honorable Thomas Jefferson, governor of the Commonwealth of Virginia, have nominated, constituted, and appointed, and by these presents do nominate, constitute, and appoint, the said Benjamin Franklin, John Jay, Henry Laurens, and Thomas Jefferson, in addition to the said John Adams, giving and granting to them, the said John Adams, Benjamin Franklin, John Jay, Henry Laurens, and Thomas Jefferson, or the majority of them, or such of them as may assemble, or, in the case of the death, absence, indisposition, or other impediment of the others, to any one of them. full power and authority, general and special, conjunctly and separately, and general and special command to repair to such place as may be fixed upon for opening negotiations for peace and there for us, and in our name, to confer, treat, agree, and conclude with the ambassadors, commissioners, and plenipotentiaries of the princes and states whom it may concern, vested with equal powers relating to the establishment of peace, and whatsoever shall be agreed and concluded for us, and in our name to sign, and thereupon make a treaty or treaties, and to transact everything that may be necessary for completing, securing, and strengthening the great work of pacification in as ample form and with the same effect as if we were personally present and acted therein, hereby promising in good faith that we will accept, ratify, fulfil, and execute whatever shall be agreed, concluded, and signed by our said ministers plenipotentiary, or a majority of them, or of such of them as may assemble, or, in case of the death, absence, indisposition, or other impediment of the others, by any one of them; and that we will never act, nor suffer any person to act, contrary to the same, in whole or in part.

In witness whereof we have caused these presents to be signed by our President and sealed with his seal.

Done at Philadelphia the fifteenth day of June, in the year of our Lord one thousand seven hundred and eighty-one, and in the fifth year of our Independence, by the United States in Congress assembled.

SAMUEL HUNTINGTON, *President.*

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No. 8.—1781, June 15: *President Huntington's Instructions to the Commissioners for Peace.*

IN CONGRESS, June 15, 1781.

*To the Hon. John Adams, Benjamin Franklin, John Jay, Henry Laurens, and Thomas Jefferson, ministers plenipotentiary in behalf of the United States to negotiate a treaty of peace:*

GENTLEMEN: You are hereby authorized and instructed to concur, in behalf of these United States, with his most Christian majesty in accepting the mediation proposed by the Empress of Russia and the Emperor of Germany.

28 You are to accede to no treaty of peace which shall not be such as may, 1st, effectually secure the independence and sovereignty of the thirteen United States, according to the form and effect of the treaties subsisting between the said United States and his most Christian majesty; and, 2dly, in which the said treaties shall not be left in their full force and validity.

As to disputed boundaries and other particulars, we refer you to the instructions given to Mr. John Adams, dated 14th of August, 1779, and 18th of October, 1780, from which you will easily perceive the desires and expectations of Congress. But we think it unsafe, at this distance, to tie you up by absolute and peremptory directions upon any other subject than the two essential articles above mentioned. You are, therefore, at liberty to secure the interest of the United States in such a manner as circumstances may direct, and as the state of the belligerent and the disposition of the mediating powers may require. For this purpose you are to make the most candid and confidential communications upon all subjects to the ministers of our generous ally, the King of France; to undertake nothing in the negotiations for peace or truce without their knowledge and concurrence; and ultimately to govern yourselves by their advice and opinion, endeavouring in you whole conduct to make them sensible how much we rely upon his majesty's influence for effectual aid in everything that may be necessary to the peace, security, and future prosperity of the United States of America.

If a difficulty should arise in the course of the negotiations for peace from the backwardness of Great Britain to acknowledge our independence, you are at liberty to agree to a truce, or to make such other concessions as may not affect the substance of what we contend for, and provided that Great Britain be not left in possession of any part of the United States.

SAMUEL HUNTINGTON, *President*.

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No. 9.—1781, July 12: *Resolution of United States Congress revoking Mr. Adams' Commission.*

JULY 12, 1781.

A motion was made by Mr. Madison, seconded by Mr. Mathews, That the Commission and instructions for negotiating a treaty of commerce between these United States and Great Britain, given to the honourable John Adams on the 29th day of September, 1779, be and they are hereby revoked.

On the question to agree to this, the yeas and nays being required by Mr. Partridge. . . .<sup>a</sup>

So it was resolved in the affirmative.

[1781, October 19: *British Surrender at Yorktown.*]

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No. 10.—1782, January 4: *Extract from letter, Mr. Livingston to Mr. Jay.*

. . . . Our exclusion from the fishery, would only be beneficial to England. The enmity it would excite, the disputes it would give rise to, would, in the course of a few years, obliterate the memory of the favours we have received. England, by sacrificing a part of her fisheries, and protecting us in the enjoyment of them, would render herself necessary to us, our friendship would be transferred

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<sup>a</sup> A vote was taken. Ayes 8. Noes 3.

to her, and France would in the end be considered as a natural enemy. I am persuaded, she has wisdom enough to see it in its true light. . . . .

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No. 11.—1782, January 8: *Extract from Report of a Committee of Congress, consisting of Mr. Lovell, Mr. Carroll, and Mr. Madison, to which had been referred certain papers relative to the fisheries and Proceedings in Congress in regard thereto on 22nd January and 20th August, 1782.*

\* \* \* \* \*

Another claim is the common right of the United States to take fish in the North American seas, and particularly on the banks of Newfoundland. With respect to this object, the said ministers are instructed to consider and contend for it, as described in the instructions relative to a treaty of commerce, given to John Adams on 29 the twenty-ninth of September, 1779, as equally desired and expected by Congress with any of the other claims not made ultimata in the instructions given to the ministers plenipotentiary for negotiating a peace on the day of last, and are therein referred to as objects of the desires and expectations of Congress. They are also instructed to observe to his most christian majesty with respect to this claim, that it does not extend to any parts of the sea lying within three leagues of the shores held by Great Britain or any other nation. That under this limitation it is conceived by Congress, a common right of taking fish cannot be denied to them without a manifest violation of the freedom of the seas, as established by the law of nations, and the dictates of reason; according to both which the use of the sea, except such parts thereof as lie in the vicinity of the shore, and are deemed appurtenant thereto, is common to all nations, those only excepted who have either by positive convention, or by long and silent acquiescence under exclusion, renounced that common right; that neither of these exceptions militate against the claim of the United States, since it does not extend to the vicinity of the shore, and since they are so far from having either expressly or tacitly renounced their right, that they were prior to the war, though indeed not in the character of an independent nation, in the constant, and even during the war, in the occasional exercise of it; that although a greater space than three leagues has in some instances been, both by publick treaties and by custom, annexed to the shore as part of the same dominion, yet, as it is the present aim of the maritime powers to circumscribe, as far as reason will justify, all exclusive pretensions to the sea, and as that is the distance specified in a treaty to which both Great Britain and his majesty are parties, and which relates to the very object in question, it was supposed that no other distance could, in the present case, be more properly assumed; that if a greater or an indefinite distance should be alleged to be appurtenant by the law of nations to the shore, it may be answered, that the fisheries in question, even those on the banks of Newfoundland, being of so vast an extent, might with much greater reason be deemed appurtenant to the whole continent of North America than to the inconsiderable portion of it held by Great Britain; that Congress expect, with greater assurance, the concurrence of his majesty in these

ideas, since his own claim to the fisheries would, by a contrary doctrine, be suspended on the mere concession of Great Britain, instead of resting on the solid and honourable basis of the law of nations. and of right; that if Great Britain cannot, by virtue of her occupancy of the shore, claim an exclusive use of the fisheries beyond the vicinity thereof, and a right to the common use is incident to the United States as a free and independent community, they cannot admit that they have no such right, without renouncing an attribute of that sovereignty which they are bound, as well by respect for his majesty's honour as for their own interests and dignity, to maintain entire; that this right is no less indispensable in its exercise than it is indisputable in its principles, the inhabitants of a considerable part of the United States being dependent thereon, both for a material proportion of their subsistence, and for the means of their commerce; and as they were in the full enjoyment of this resource prior to the revolution, the loss of it by an event from which very different expectations have been cherished, and which ought to bestow, as far as possible, equal advantages on all who have laboured equally for its accomplishment, could not fail to be attended with disappointment, and mortifying comparisons: that from these considerations, Congress have the most earnest desire, as well as the most sanguine hope, that his majesty's efforts will obtain for his allies a stipulation on the part of Great Britain, not to molest them in the common use of the fisheries, as above stated; or, if insuperable difficulties should oppose a positive stipulation in their favour, that his majesty will in every event find means to avoid a surrender of that common right; that whilst, however, this latter expedient is suggested to his majesty, it cannot escape his discernment that it is so pregnant with dangerous consequences, that the former cannot be contended for with too much urgency and zeal.

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On the 22d of January, 1782, the foregoing report was referred to another committee, consisting of Mr. Carroll, Mr. Randolph and Mr. Montgomery, who on the 16th day of August, 1782, reported, that they have collected facts and observations as follows, which they recommend to be referred to the secretary for foreign affairs, to be by him digested, completed and transmitted to the ministers plenipotentiary for negotiating a peace, for their information and use.

\* \* \* \* \*

*August 20, 1782.*—The report being under debate for referring the foregoing facts and observations to the secretary for foreign affairs, to be by him digested, completed and transmitted to the ministers plenipotentiary of the United States for negotiating a treaty of peace—

A motion was made by Mr. Rutledge, seconded by Mr. Williamson, to postpone the consideration of the report to make way for a motion which he read in his place by way of argument.

On the question for postponing, the yeas and nays being required by Mr. Telfair— . . . .

So the question was lost.

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\*A vote was taken. Ayes 6. Noes 4.

A motion was made by Mr. Witherspoon, seconded by Mr. Montgomery, that the report be committed; and on the question for commitment, the yeas and nays being required by Mr. Bland— . . . .<sup>a</sup>

So it was resolved in the affirmative.

30 No. 12.—1782, *January 31: Extract from letter, United States Secretary of State (Mr. Livingston) to General Greene.*

OFFICE OF FOREIGN AFFAIRS,  
*Philadelphia, January 31, 1782.*

DEAR SIR: I was this day favored with yours of the 13th ultimo. I need not tell you that the intelligence it conveyed, and the spirit in which it was written, afforded me the most sensible pleasure. The idea it holds forth of an attempt upon Charleston, and the prospect of success in it, is one that we dare not indulge here, more especially as troops have sailed from New York, and, as we presume, to Charleston, but you have taught us rather to measure your success by your genius than by your means.

I wish it were in my power to tell you that our accounts from Europe were proportionate to our expectations. The combined fleets, as you know, have returned and separated without having effected anything. The British are again masters of the ocean. Gibraltar is a rock on which all the exertions of Spain seem to split, and the siege of Fort St. Philip seems to be carried on in the most energetic manner. We have no prospect of forming an alliance either with Spain or Holland, who both appear to sigh for peace. Our loan on the guarantee of France with the last is nearly completed. But what is not a little unsatisfactory, it is also nearly expended by advances which France has made us on the credit of it. From Spain we are likely to get nothing.

The negotiations for a peace are entirely at a stand; the mediating powers have no interest in wishing it, and the belligerent nations are neither of them sufficiently weakened to request their interposition. The Count de Vergennes assures us that Britain will still make the most vigorous exertions. I mention these circumstances not only for your information, but that you may make the proper use of them in animating the exertions of the southern States. It is the misfortune of America to presume too much upon each dawning of success, and to believe that peace must tread upon the heels of every little advantage, instead of being taught by her own struggles and difficulties that every nation has resources that surpass the expectations of its enemies.

Would to God that you could be enabled, by the animated exertions of the southern States, to expel the enemy from them without the aid of our allies. This would re-establish our character for activity in Europe, where, I am sorry to say, it has for some time past been upon the decline, and I do sincerely believe that, co-operating with the brilliant successes of the last fall, it would incline the enemy to peace, without which I have no expectations of it. But I fear this is rather to be wished for than expected. . . .

<sup>a</sup> A vote was taken. Ayes 10. Noes 0.

No. 13.—1782, February 19: *Extract from letter, United States Secretary of State (Mr. Livingston) to the Governors of the various States.*

. . . . It is an undeniable fact that Britain has not, in the course of the last campaign, gained any advantage of her enemies, but, on the contrary, has seen their fleets ride triumphant in the seas she proudly called her own, and an army in which she placed her fondest hopes made captive. But, on the other hand, we are compelled to admit that she has met with no such reverse of fortune as materially to debilitate her or weaken her resources for another campaign. Her trade has, for the most part, returned in safety. Her fleets have blocked up those of the Dutch, and, upon the separation of the combined fleets, recovered the superiority in the European seas. The army taken in America is only so far decidedly ruinous to her affairs here as we know how to avail ourselves of the advantage it affords.

That her pride is not humbled, that she did not wish for peace prior to this advantage is obvious, 1st, from her refusing to make a separate treaty with the Dutch, who, under the mediation of the Empress of Russia, seemed anxiously to wish it; 2dly, from her neglect to notice the last proposals of the mediating powers, which yet remain unanswered; so that if any alteration is made in their sentiments, on this subject they must originate in their ill success in America, for in every other quarter their defensive war seems to have been supported with advantage. How far this will operate admits of a doubt which prudence directs us not to rely upon. Money, the great support of modern wars, has been raised with more facility in England than in any country in the world; and we find the minority last year censuring Lord North for giving the advantage of lending to his friends. Their losses may indeed render subscriptions more expensive to the public, but there is no well-grounded room to suppose they will not fill up, and still less reason to believe, if the means for carrying on the war are attainable, that the vindictive spirit of the king and his ministry and the overweening pride of the nation will soon yield to make a peace which involves their disgrace and humiliation. But as strength or weakness are mere comparative terms, we can form no judgment of the measures of Britain but by attending to the force and disposition of her enemies.

The United Provinces are evidently dragged into the war, and have prosecuted it as if they momentarily expected a peace. The colonies in the West Indies have been taken without being in a state to make the smallest resistance, and the active interposition of France alone saved those in the east from sharing the same fate. Our last letters from Holland place the distress of their commerce in a strong point of view. They are unhappily rent by parties which clog the wheels of Government, though it is said the party opposed to England are the most numerous and growing in strength, so that at some future day we may reasonably hope they will assume the entire ascendancy; yet we can build very little on this till the close of another year. This much is certain, they are not yet allied to us, nor have they given us reason to believe that they intend to be so. They wish for peace, and will take no measures that can obstruct it. They have lent us no money, nor are they likely to do it; from whence

we may presume either that they doubt our success or do not much interest themselves in it.

Our expectations from Spain are scarcely more flattering. Some little aids of money have been received after long solicitation; hardly so much as paid the expense of soliciting. We have reason to suppose that no more will be granted. They are still cold with regard to our alliance; nothing but brilliant success can bring it to a conclusion. Nor have we the smallest reason to expect any pecuniary aid from her, even if she should confederate with us in time to be of use for the next campaign. She has at this moment very many and very expensive operations on hand; and, till she has allied herself to us, we have no certainty that she will choose to continue the war for the attainment of our independence, if Britain should be sufficiently humbled to sacrifice to her the objects which led her into the war.

To France then we turn as the only enemy of Great Britain, who is at the same time our ally, who will persevere in the war for the attainment of our independence. She has already done so much for us in order to afford us the means of doing something for ourselves that she may reasonably hope to find the effects of her benevolence. Her fleets have protected our coasts, her armies have fought our battles; she has made various efforts to restore our finances by paying the interest of our loans, by obtaining credit in Europe on our account for clothing, arms, and necessaries, by advancing money and by opening and guaranteeing a loan for us to a considerable amount in Holland, when by the abolition of paper our finances were totally deranged. These sums are nearly expended, and another campaign is about to be opened. France assures us that it is not in her power to make us any further grants of money. Her Ministers repeat this to us in every letter in a tone that persuades us of their determination on that point.

What, then, is to be done? Are we to relinquish the hopes which the present debility of the enemy affords us of expelling them by one decided effort, and compensating all our losses by the enjoyment of an active commerce? Are we to return to the wretched, oppressive system we have quitted? Are we to carry on a weak and defensive war with an unpaid army, whose precarious subsistence must depend upon what can be torn by violence from the industrious husbandman? Shall we vainly, and I think disgracefully, supplicate all the powers of Europe for those means which we have in our own hands if we dare call them forth, and which after all must be called forth if we continue the war (and upon that subject there can be no doubt till the end for which we took up arms is attained). The only question is whether each State shall fairly and regularly contribute its quota, or whether that which happens to be the seat of war shall (as has too often been the case) bear the whole burden, and suffer more from the necessities of our own troops than the ravages of the enemy. Whether we shall drive the enemy from their posts with a strong body of regular troops or whether we shall permit them to extend their devastations, while with our battalions and fluctuating corps of militia we protract a weak defensive war till our allies are discouraged and some unfavorable change takes place in the system of Europe.

Your excellency, I am persuaded, will pardon the freedom with which I write. You see the necessity which dictates my letter, and



were it in my power to communicate all that our friends in Europe think of our inactivity, I am persuaded you would urge your State to exertion in much stronger terms than I dare venture to use.

When Congress call upon a State for supplies, they are usually answered by pleas of disability, urged too by the State good faith and a firm persuasion that they speak their real situation. A recurrence to facts that have passed under their own observation will convince them that they are deceived. . . .

It is true we are present in such a situation as to have no apprehensions for the final establishment of our independence; but surely it is a matter of some moment to us whether we shall obtain it, or at least be freed from the ravages of the enemy and the burden of the war in the course of six months at the expense of eight millions of dollars, or whether we shall wait for it till a general and perhaps a distant peace, and be subject in the mean while to infinitely more expense and all the distress that attends a country which is the seat of war. . . .

No. 14.—1782, February 22—March 4: Debate in British Parliament.

Debate in the Commons on General Conway's Motion for putting an end to the American War: February 22.

[Motion] "That an humble Address be presented to his Majesty, earnestly imploring his Majesty, that, taking into his royal consideration the many and great calamities which have attended the present unfortunate war, and the heavy burthens thereby brought on  
32 his loyal and affectionate people, he will be pleased graciously to listen to the humble prayer and advice of his faithful Commons, that the war on the continent of North America may no longer be pursued for the impracticable purpose of reducing the inhabitants of that country to obedience by force; and expressing their hope, that the earnest desire and diligent exertion to restore the public tranquillity, of which we have received his Majesty's gracious assurances, may, by a happy reconciliation with the revolted colonies, be forwarded and made effectual, to which great end his Majesty's faithful Commons will be ready most cheerfully to give their utmost assistance."

\*            \*            \*            \*            \*            \*            \*

At two in the morning, the House divided:

\*            \*            \*            \*            \*            \*            \*

Yeas -----	193
Noes -----	194

Majority against general Conway's motion, 1.

Debate in the Commons on the Resolution moved by General Conway against the further Prosecution of Offensive War with America: February 27.

General *Conway* rose to renew his attempt to bring the House to agree with him, that, in the present posture of our affairs, it would be inexpedient and improper any longer to prosecute the American war. . . .

. . . . He concluded, by moving the following Resolution: "That it is the opinion of this House, that the further prosecution of offensive war on the continent of North America, for the purpose of reducing the revolted colonies to obedience by force, will be the means of weakening the efforts of this country against her European enemies; tends, under the present circumstances, dangerously to increase the mutual enmity, so fatal to the interests both of Great Britain and America; and, by preventing an happy reconciliation with that country, to frustrate the earnest desire graciously expressed by his Majesty to restore the blessings of public tranquillity."

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Mr. Attorney General Wallace [moved] "That the debate be adjourned till this day fortnight."

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At half past one o'clock the House divided on the Attorney General's motion for adjournment:

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Yeas -----	215
Noes -----	234

Majority against Ministers—19. The original question was then put, and carried without a division.

The minister being thus left in a minority, general Conway followed up his first motion with another: "That an humble Address be presented to his Majesty, most humbly to represent to his Majesty, that the farther prosecution of offensive war on the continent of North America, for the purpose of reducing the revolted colonies to obedience by force, will be the means of weakening the efforts of this country against her European enemies, tends, under the present circumstances, dangerously to increase the mutual enmity so fatal to the interests both of Great Britain and America; and, by preventing an happy reconciliation with that country, to frustrate the earnest desire graciously expressed by his Majesty to restore the blessings of public tranquillity." This motion was agreed to without a division.

*Resolved*,—That the said Address be presented to his Majesty by the whole House.

*March 4.*—The Speaker reported to the House, that the House had attended his Majesty with their Address, to which he had been pleased to return the following Answer:

"Gentlemen of the House of Commons;

"There are no objects nearer to my heart than the ease, happiness, and prosperity of my people. You may be assured, that, in pursuance of your advice, I shall take such measures as shall appear to me to be most conducive to the restoration of harmony between Great Britain and the revolted colonies, so essential to the prosperity of both; and that my efforts shall be directed in the most effectual manner against our European enemies, until such a peace can be obtained as shall consist with the interests and permanent welfare of my kingdoms."

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No. 15.—1782, April 6: *Letter, Lord Shelburne, British Colonial Secretary (in the Ministry of Lord Rockingham, which had replaced that of Lord North) to Dr. Franklin.*

LONDON, April 6, 1782.

DEAR SIR: I have been favored with your letter, and am much obliged by your remembrance. I find myself returned nearly to the same situation, which you remember me to have occupied nineteen years ago, and I should be very glad to talk to you as I did  
 33 then, and afterwards in 1767, upon the means of promoting the happiness of mankind, a subject much more agreeable to my nature than the best concerted plans for spreading misery and devastation. I have had a high opinion of the compass of your mind and of your foresight. I have often been beholden to both, and shall be glad to be so again, as far as is compatible with your situation. Your letter discovering the same disposition, has made me send to you Mr. Oswald. I have had a longer acquaintance with him than even I have had the pleasure to have with you. I believe him an honest man, and, after consulting some of our common friends, I have thought him the fittest for the purpose. He is a pacifical man, and conversant in those negotiations which are most interesting to mankind. This has made me prefer him to any of our speculative friends, or to any person of higher rank. He is fully apprized of my mind, and you may give full credit to everything he assures you of. At the same time, if any other channel occurs to you, I am ready to embrace it. I wish to retain the same simplicity and good faith which subsisted between us in transactions of less importance.

I have the honour to be, &c.

SHELburnE.

[1782, April 12: *Rodney's Naval Victory in the West Indies.*]

No. 16.—1782, April 19: *Dr. Franklin's Memorandum of a conversation with Mr. Oswald.*

The next morning, when I had written the above letter to Lord Shelburne, I went with it to Mr. Oswald's lodgings and gave it to him to read before I sealed it, that in case anything might be in it with which he was not satisfied, it might be corrected; but he expressed himself much pleased.

In going to him [Oswald] I had also in view the entering into a conversation which might draw out something of the mind of his court on the subject of Canada and Nova Scotia. I had thrown some loose thoughts on paper, which I intended to serve as memorandums for my discourse, but without a fixed intention of showing them to him. On his saying that he was obliged to me for the good opinion I had expressed of him to Lord Shelburne in my letter, and assuring me that he had entertained the same of me, I observed that I perceived Lord S. had placed great confidence in him, and as we had happily the same in each other we might possibly, by a free communication of sentiments and a previous settling of our own minds on

some of the important points, be the means of great good by impressing our sentiments on the minds of those with whom they might have influence, and where their being received might be of importance. I then remarked that his nation seemed to desire a reconciliation; that to obtain this the party which had been the aggressor and had cruelly treated the other should show some marks of concern for what was past and some disposition to make reparation; that perhaps there were things, which America might demand by way of reparation and which England might yield, and that the effect would be vastly greater if they appeared to be voluntary and to spring from returning good will; that I, therefore, wished England would think of offering something to relieve those who had suffered by its scalping and burning parties. Lives, indeed, could not be restored nor compensated, but the villages and houses wantonly destroyed might be rebuilt, &c. I then touched upon the affair of Canada, and as, in a former conversation, he had mentioned his opinion that the giving up of that country to the English at the last peace, had been a politic act in France, for that it had weakened the ties between England and her colonies, and that he himself had predicted from it the late revolution, I spoke of the occasions of future quarrel that might be produced by her continuing to hold it, hinting, at the same time, but not expressing too plainly, that such a situation, to us so dangerous, would necessarily oblige us to cultivate and strengthen our union with France. He appeared much struck with my discourse, and, as I frequently looked at my paper, he desired to see it. After some little delay I allowed him to read it. The following is an exact copy:—

## NOTES FOR CONVERSATION.

To make a peace durable, what may give occasion for future wars should, if practicable, be removed.

The territory of the United States and that of Canada, by long extended frontiers, touch each other.

The settlers on the frontiers of the American provinces are generally the most disorderly of the people, who, being far removed from the eye and control of their respective governments, are more bold in committing offenses against neighbors, and are forever occasioning complaints and furnishing matter for fresh differences between their States.

By the late debates in Parliament and public writings it appears that Britain desires a *reconciliation* with the Americans. It is a sweet word. It means much more than a mere peace and what is heartily to be wished for. Nations make a peace whenever they are both weary of making war. But if one of them has made war upon the other unjustly, and has wantonly and unnecessarily done it great injuries and refuses reparation, there may, for the present, be peace; the resentment of those injuries will remain, and will break  
 34 out again in vengeance when occasions offer. These occasions will be watched for by one side, feared by the other, and peace will never be secure; nor can any cordiality subsist between them.

Many houses and villages have been burnt in America by the English and their allies, the Indians. I do not know that the Americans will insist on reparation; perhaps they may. But would it not

be better for England to offer it? Nothing would have a greater tendency to conciliate, and much of the future commerce and returning intercourse between the two countries may depend on reconciliation. Would not the advantage of reconciliation by such means be greater than the expense?

If, then, a way can be proposed which may tend to efface the memory of injuries, at the same time that it takes away the occasion of fresh quarrels and mischief, will it not be worth considering, especially if it can be done, not only without expense, but be a means of saving?

Britain possesses Canada. Her chief advantage from that possession consists of the trade for peltry. Her expenses in governing and defending that settlement must be considerable. It might be humiliating to her to give it up on the demand of America. Perhaps America will not demand it; some of her political rulers may consider the fear of such a neighbor as the means of keeping the thirteen States more united among themselves, and more attentive to military discipline. But on the mind of the people in general, would it not have an excellent effect if Britain should voluntarily offer to give up this province; though on these conditions that she shall, in all times coming, have and enjoy the right of free trade, thither, unincumbered with any duties whatsoever; that so much of the vacant lands there shall be sold as will raise a sum sufficient to pay for the houses burnt by the British troops and their Indians; and also to indemnify the royalists for the confiscation of their estates?

This is mere conversation between Mr. Oswald and Mr. Franklin, as the former is not empowered to make propositions, and the latter can not make any without the concurrence of his colleagues.

He [Oswald] then told me, that nothing in his judgment could be clearer, more satisfactory, and convincing, than the reasonings in that paper; that he would do his utmost to impress Lord Shelburne with them. . . .

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No. 17.—1782, April 23: *British Cabinet Minute.*

APRIL 23RD, 1782.

*Present*—Lord Chancellor, Lord President, Duke of Richmond, Marquis of Rockingham, Duke of Grafton, Lord Ashburton, Lord John Cavendish, Lord Keppel, General Conway, Mr. Fox, Lord Shelburne.

It is humbly submitted to his Majesty that Mr. Oswald shall return to Paris, with authority to name Paris as the place, and to settle with Dr. Franklin the most convenient time for setting on foot a negotiation for a general peace, and to represent to him that the principal points in contemplation are—The allowance of independence to America upon Great Britain's being restored to the situation she was placed in by the treaty of 1763, and that Mr. Fox shall submit to the consideration of the King a proper person to make a similar communication to Mons. de Vergennes.

No. 18.—1782, April 28.—*Memoranda furnished by Lord Shelburne to Mr. Oswald after his return to England with Dr. Franklin's "Notes for Conversation."*

MEMMS. OF GENERAL INSTRUCTION.

A Copy of the Cabinet Minutes to be shewn to Doctor Franklyn—but he must have no Copy of it.

A Fleet of upwards of 40 Ships in the W. Indies—highly probable we shall intercept the Reinforcement of the 3 ships for de Gras.

The French Islands in great distress.

A Blow or two at Sea may decide a great deal.

Insist in the strongest manner, that if America is Independent, she must be so of the whole World. No secret, tacit, or ostensible Connection with France.

If the Negotiation breaks off, all our Rights in America to stand as before.

Remarks on the Private Paper:

1st. Why does he say that he does not know of the Americans having any Intention of making Claims of Indemnification, he and others having full powers—That is not open—No Reparation to be thought of—The Money spent in America is more than sufficient Indemnification for all particular Losses. Lord Shelburne has a Manuscript of Sir William Petty to send in return for this Paper. The Title of it is to shew that Ireld. would have been in a State of poverty and uncivilised Savageness, if it had not been for the Money expended by the English in their Wars in that Country.

All Ideas of a supposed justice in Claims of Indemnification to be disowned—& if started,—to be waived as much as possible.

It is reasonable to expect a free trade, unencumbered with duties to every part of America.

Make early and strict conditions, not only to secure all debts whatever due to British subjects, but likewise to restore the Loyalists to a full enjoyment of their rights and privileges. And their indemnification to be considered. Lord Shelburne will never give up the Loyalists. The Penn family have been sadly used, and Lord Shelburne is personally interested for them, and thinks it his duty to be so for all.

The private paper desires Canada for three reasons:—

1st. By way of reparation—Answer.—No reparation can be heard of.

2d. To prevent future wars.—Answer.—It is to be hoped that some more friendly method will be found.

3d. Loyalists, as a fund of indemnification to them.—Answer.—No independence to be acknowledged without their being taken care of.

A compensation expected for New York, Charlestown, and Savannah.

Penobscot to be always kept.

No. 19.—1782, April 28: *Extract from letter, Lord Shelburne to Dr. Franklin.\**

SHELburnE HOUSE, April 28, 1782.

DEAR SIR: I have received much satisfaction in being assured by you, that the qualifications of wisdom and integrity, which induced me to make choice of Mr. Oswald as the fittest instrument for the renewal of our friendly intercourse, have also recommended him so effectually to your approbation and esteem. I most heartily wish that the influence of this first communication of our mutual sentiments may be extended to a happy conclusion of all our public differences. . . .

It is also determined that Mr. Fox, from whose department that communication is necessarily to proceed, shall send a proper person, who may confer and settle immediately with the Count de Vergennes the further measures and proceedings which may be judged proper to adopt towards advancing the prosecution of this important business.

In the meantime Mr. Oswald is instructed to communicate to you my thoughts upon the principal objects to be settled. . . .

No. 20.—1782, April 28: *Extract from letter, Mr. Fox to Mr. Fitzpatrick.*

Shelburne has had an answer from Dr. Franklin, who seems much disposed to peace, if general. Mons. de Vergennes has, it seems, expressed the same sentiments, and wishes to have some opening from hence: in consequence of this, Shelburne's man is to go back this day to Paris, and upon the pretence of the business having begun with the American Ministers he had a great mind, if I would have consented, to have kept even this negotiation in his own hands; but this I would not submit to, and so Grenville is to set out for Paris to-morrow or next day, in order to state our ideas of peace to Mons. de Vergennes. Whether anything will come of this, one cannot tell. I think it will all depend upon this point, whether the French like peace enough to make them influence the Spaniards to be reasonable, for with respect to France, I still think there cannot be many difficulties.

No. 21.—1782, May 1 [circa]: *Extract from the Duke of Grafton's Autobiography.*

Mr. Oswald had been the person first pitched on to see and communicate with Dr. Franklyn on the subject of pacification. On this gentleman's return it was Mr. Fox's wish to have placed  
36 the whole negociation with any of the Powers at war into the hands of Mr. Grenville: but the Cabinet decided, that, as the doctor desired Mr. Oswald's return, to whom he had spoken with openness, and freedom, it would be impolitic not to comply with a

\* This letter was given by Lord Shelburne to Mr. Oswald for delivery to Dr. Franklin.

request of this nature. Besides it was not yet fully known in what light our offers to treat might be received by the French Ministry. The line of our proposals was independence for America, and the restitution of matters to the state in which they stood on the Treaty of Paris; and these were to be considered as the basis of the negotiation. Mr. Thos. Grenville was soon after sent over to Paris to treat, according to Mr. Fox's plan, with all, or any of the belligerent Powers.

No. 22.<sup>b</sup>—1782, May 4: *Extract from Dr. Franklin's Journal.*

Mr. Oswald also informed me that he had conversed with Lord Shelburne on the subject of my paper of *Notes* relating to reconciliation; that he had shown him the paper and had been prevailed on to leave it with him a night, but it was on his lordship's solemn promise of returning it, which had been complied with, and he now returned it to me; that it seemed to have made an impression and he had reason to believe that matter might be settled to our satisfaction towards the end of the treaty, but in his own mind he wished it might not be mentioned at the beginning; that his lordship indeed said he had not imagined reparation would be expected, and he wondered I should not know whether it was intended to demand it. Finally, Mr. Oswald acquainted me that, as the business now likely to be brought forward more particularly appertained to the department of the other secretary, Mr. Fox, he was directed to announce another agent coming from that department, who might be expected every day, viz, the Honorable Mr. Grenville, brother to Lord Temple and son of the famous Mr. George Grenville, formerly chancellor of the exchequer. I immediately wrote the following note to Count de Vergennes:

TO THE COUNT DE VERGENNES.

PASSY, May 4, 1782.

SIR: I have the honor to acquaint your excellency that Mr. Oswald is just returned from London and is now with me. He has delivered me a letter from Lord Shelburne, which I enclose for your perusal, together with a copy of my letter to which it is an answer. He tells me that it has been agreed in council to treat at Paris, and to treat of a *general peace*, and that as it is more particularly in the department of Mr. Fox to regulate the circumstances, a gentleman, Mr. Grenville, to be sent by him for that purpose, may be daily expected here. Mr. Oswald will wait on your excellency whenever you shall think fit to receive him.

I am, with respect, &c.,

B. FRANKLIN.

And the next day I received the following answer:

THE COUNT DE VERGENNES TO B. FRANKLIN.

[Translation.]

VERSAILLES, May 5, 1782.

SIR: I have received the letter which you did me the honor to write to me the 4th instant, as also those which accompanied it. I will see you with your friend, with pleasure, at eleven o'clock to-morrow morning.

I have the honour to be, &c.,

DE VERGENNES.

Accordingly on Monday morning I went with Mr. Oswald to Versailles and we saw the Minister. Mr. Oswald acquainted him with



the disposition of his court to treat for a general peace, and at Paris, and he announced Mr. Grenville. . . .

In our return Mr. Oswald repeated to me his opinion that the affair of Canada would be settled to our satisfaction, and his wish that it might not be mentioned till towards the end of the treaty. . . .

No. 23.—1782, May 6: *Extract from Mr. Oswald's Minutes.*

. . . After dinner, the doctor took out Lord Shelburne's letter to him and read that part, wherein his Lordship says that I would explain to him his sentiments on the subject of the proposed accommodation. . . .

Whether from the one motive or the other, I won't pretend to say, but it appeared to me that a certain moderation seems to prevail in the minds of those Commissioners, which I did not expect in relation to the Colonies which had not revolted; for in all the conversation I have had with Mr. Franklin or Mr. Laurens, nothing had ever passed to shew their intention or inclination to dispute our right to the possession of those Colonies. But on the contrary, when accidentally mentioned, it was alwise in a way as if they indisputably remained on the ancient footing, which I own I was surprised at. And had I been an American, acting in the same character as those Commissioners, I should have held a different language to those of Great Britain, and would have plainly told them that for the sake of the future peace of America, they must entirely quit possession of every part of that continent, so as the whole might be brought under the cover of one and the same political constitution, and so must include under the head of independance, to make it real and complete, all Nova Scotia, Canada, Newfoundland and East Florida. That this must have been granted if insisted on, I think is past all doubt, considering the present unhappy situation of things. But, as I have said, nothing of that tendency was ever insinuated by any of the said gentlemen, but, on the contrary an acknowledged admission of our original right to those Colonies being supposed as unimpeachable. . . .

No. 24.—1782, May 14: *Extract from letter, Mr. Grenville to Mr. Fox.*

. . . He [Mr. Franklin] had too once before said, that, in forming a treaty there should, he thought, without doubt be a difference in a treaty between England and America, and one between England and France, that always had been at enmity. In these expressions, as well as in a former one, where he rested much upon the great effect that would be obtained by some things being done *spontaneously* from England, I think you will perhaps trace something not altogether wide of those ideas, which I suppose may have weighed with him. . . .

No. 25.—1782, *May 18: Extract from letter, Mr. Oswald (from Calais, on his way to London), to Lord Shelburne.*

... On these occasions I could observe the doctor [Franklin] spoke the language more of a philosopher, than as fettered by the ties of a particular commission. And upon the whole, as he is certainly a man of good sense, so I take him to be equally happy in the enjoyment of the most liberal sentiments of benevolence and humanity. . . .

Instead of sending, he came himself about eight o'clock and delivered me his letters. On that occasion, after expressing himself with kindness respecting me, he said he wished much the affair was over. In which I concurred. He then said that once they had what they sought for properly secured, (meaning no doubt independence, although I don't remember he mentioned the word) *they desired no more.* . . .

Therefor, to save what remains in allegiance on that continent, and such parts of our army as are stationed there, we ought to make the most of the present occasion; not only by a final conclusion of treaty for putting an end to subsisting differences with these Colonies but also *in such way and manner as is most likely to prevent any future revival of them* and even, if possible, to obliterate the remembrance of them in future times.

In proceeding to give these ideas some actual consistence, it is to be observed,

That a grant of independence is the great question regarding the Colonies; and, from what can be guessed from the conversation of their Commissioners, it is the only point in which they think themselves materially concerned.

And consequently, if that is granted, they are satisfied. . . .

No. 26.—1782, *May 18, British Cabinet Minute.*

GROSVENOR SQUARE, *May 18th, 1782.*

*Present*—Lord Chancellor, Lord President, Duke of Richmond, Lord Rockingham, Lord Shelburne, Lord John Cavendish, Lord Keppel, Lord Ashburton, General Conway, Mr. Fox.

It is humbly submitted to your Majesty, that your Majesty will be pleased to direct Mr. Fox to order full powers to be given to Mr. Grenville to treat and conclude at Paris, and also to direct Mr. Fox to instruct Mr. Grenville to make propositions of peace to the belligerent powers upon the basis of independence to the thirteen colonies in North America, and of the treaty of Paris; and in case of such proposition not being accepted, to call upon Monsieur de Vergennes to make some proposition on his part, which Mr. Grenville will, of course, report to Mr. Fox.

38 No. 27.—1782, *May 18: Letter, Mr. Fox to The King.*

Mr. Fox has the honour of transmitting to your Majesty the minute of the Cabinet Council assembled this morning at Lord Rockingham's. Mr. Grenville will, no doubt, make a proper use of the

very important news of this day, upon which Mr. Fox begs leave to take this opportunity of congratulating your Majesty; but, in general, Mr. Fox thinks it his duty to submit it to your Majesty, that your Majesty's servants have proceeded upon this occasion rather upon the supposition that the present negotiation for peace will fail, and that the measures which they humbly recommend to your Majesty upon this occasion are directed more with a view to the use which may be made of them, for the purposes of detaching from France her present allies, and of conciliating the powers of Europe to this country, than to the object of success in the present treaty with the Court of Versailles. If Monsieur de Vergennes should reject Mr. Grenville's proposals, and should either decline making any on his part, or make such as should be evidently inadmissible, your Majesty's servants cannot help flattering themselves that such a conduct, on the part of the Court of Versailles, may produce the most salutary effects with regard both to Europe and to America, and possibly to the exertions of Great Britain herself.

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No 28.—1782, May 23: *British Cabinet Minute.*

CLARGES STREET, May 23rd, 1782.

*Present*—Lord Chancellor, Lord Privy Seal, Lord Rockingham, Lord Shelburne, Lord John Cavendish, Lord Keppel, Lord Ashburton, General Conway, Mr. Fox.

It is humbly recommended to your Majesty to direct Mr. Fox to instruct Mr. Grenville to propose the independency of America in the first instance, instead of making it a condition of a general treaty.

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No. 29.—1782, May 26; *Letter, Mr. Fox to Mr. Grenville.*

ST. JAMES 26th May 1782

SIR: I had the honour of laying your letter of the 14th instant before the King. His Majesty was pleased to refer it to the consideration of his confidential servants and in consequence of their advice has commanded me to signify to you his pleasure that you should lose no time in making all the advantage possible of the concession which His Majesty has from his ardent desire of peace been induced to make with respect to the Independency of the thirteen States; and in order to this end I have it in command from His Majesty, to authorize you to make the offer of the said Independency in the first instance of making it a conditional article of a general treaty. I need not point out to you the use that may be made of this method of commencing the business, as you seem to have a very just idea of the advantages that may be derived from it. The principal one appears to me to be this: that the American agents must clearly perceive if there should now be any obstacle to the recognition which they have so much at heart, and which after all must be a matter infinitely interesting to them that the difficulty comes from the Court of Versailles and not from hence, and that it is chiefly owing to the number of allies with

which that court thinks fit to encumber America in the negotiation for a peace, although she was never benefited by their assistance during the war. When this point shall have been reasoned and understood I cannot help flattering myself that it will appear upon the face of the thing unreasonable and intolerable to any honest American, that they having gained the point for which they contested should voluntarily and unnecessarily submit to all the calamities of war without an object, till all the Powers in Europe shall have settled all the various claims and differences which they may have one with the other, and in which it is not even pretended that America has any interest whatever either near or remote. You will not fail to press Mr. Franklin's own idea, that the object of the treaty of Alliance with France being attained, the treaty determines to which, if that gentleman should adhere, we may fairly consider one of the ends of your mission as attained.

As to the good faith which is supposed to be pledged by Congress to France not to make a separate peace, I think it can only be understood that Congress is bound not to enter into any treaty separately or without the knowledge and consent of France, but surely not that, when a general peace is proposed, Congress is bound to support every claim set up by the Court of Versailles and her allies, which would be a kind of engagement that never was, I believe, entered into by any State at any time. It has often been stipulated between two allied

39 Powers that one shall not make peace till the other has attained some specific object named in the treaty, but that one country should bind herself to another to make war till her ally shall be satisfied with respect to all the claims she may think fit to set up, claims undefined and perhaps unthought of at the time of making the engagement, would be a species of treaty as new, I believe, as it would be monstrous. If this view of the thing should produce the effects you seem inclined to hope from it, I need not observe to you how greatly all the advantages of a separate peace would be increased by the late events in the West Indies; but I have the satisfaction to assure you that those events have in no degree abated His Majesty's most ardent and sincere desire for a general pacification, and I concur with you in your conjecture that the extravagance of the French expectations arises chiefly from the support they expect from America, and consequently will be considerably abated whenever they see reason to fear the loss of that support; so that if things should take a right turn with respect to the American agents, the best road may probably be opened to a general as well as a separate peace. I send you inclosed last night's "Gazette," containing an account of two more ships of the line and one frigate which Sir Samuel Hood has taken from the enemy. I am commanded by His Majesty to direct you to communicate with Mr. Oswald with the greatest freedom and openness upon the concerns of your mission, which are connected more and more every day with the business of America. With respect to Mr. Franklin if he continues in those friendly dispositions which your letter and Mr. Oswald's account seem to indicate the more confidence you show to him, the better chance there will be of bringing this business either in one way or in the other to a successful issue.

I am, Sir, &c.

## No. 30.—1782, June 3: Extract from Dr. Franklin's Journal.

On Monday, the 3d, Mr. Oswald came according to appointment. He told me he had seen and had conversations with Lord Shelburne, Lord Rockingham, and Mr. Fox; that their desire of peace continued uniformly the same, though he thought some of them were a little too much elated with the late victory in the West Indies, and when observing his coolness, they asked him if he did not think it a very good thing; yes, said he, if you do not rate it too high. He went on with the utmost frankness to tell me that the peace was absolutely necessary for them; that the nation had been foolishly involved in four wars, and could no longer raise money to carry them on, so that if they continued it would be absolutely necessary for them to stop payment of the interest money on the funds, which would ruin their future credit. He spoke of stopping on all sums above £1,000 and continuing to pay on those below, because the great sums belonged to the rich, who could better bear the delay of their interest, and the smaller sums to the poorer persons, who would be more hurt and make more clamor, and that the rich might be quieted by promising them interest upon their interest. All this looked as if the matter had been seriously thought on.

Mr. Oswald has an air of great simplicity and honesty, yet I could hardly take this to be merely a weak confession of their deplorable state, and thought it might be rather intended as a kind of intimidation, by showing us that they had still that resource in their power, which he said would furnish five millions a year. But, he added, our enemies may do what they please with us; *they have the ball at their foot*, was his expression, and we hope they will show their moderation and magnanimity. . . .

Mr. Oswald also gave me a copy of a paper of memorandums, written by Lord Shelburne, viz. :—

1. That I am ready to correspond more particularly with Dr. Franklin, if wished.
2. That the *Enabling Act* is passing with the insertion of commissioners recommended by Mr. Oswald; and, on our part commissioners will be named, or any character given to Mr. Oswald, which Dr. Franklin and he may judge conducive to a final settlement of things between Great Britain and America, which Dr. Franklin very properly says requires to be treated in a very different manner from the peace between Great Britain and France, who have always been at enmity with each other.
3. That an establishment for the loyalists must always be on Mr. Oswald's mind, as it is uppermost in Lord Shelburne's, besides other steps in their favor to influence the several States to agree to a fair restoration or compensation for whatever confiscations have taken place.
4. To give Lord Shelburne's letter about Mr. Walpole to Dr. Franklin.

On perusing this paper I recollected that a Bill had been some time since proposed in Parliament, *to enable his majesty to conclude a peace or truce with the revolted provinces in America*, which I supposed to be the enabling bill mentioned that had hitherto slept and, not having been passed, was perhaps the true reason why the

Colonies were not mentioned in Mr. Grenville's commission. Mr. Oswald thought it likely, and said that the words, "Insertion of commissioners recommended by Mr. Oswald," related to his advising an express mention in the bill of the commissioners appointed by Congress to treat of peace, instead of the vague denomination of *any person or persons, &c.*, in the first draft of the bill.

As to the loyalists, I repeated what I had said to him when first here, that their estates had been confiscated by the laws made in particular States where the delinquents had resided, and not by any law of Congress, who, indeed, had no power either to make such  
 40 laws or to repeal them, or to dispense with them, and therefore could give no power to their commissioners to treat of a restoration for those people; that it was an affair appertaining to each State. That if there were justice in compensating them, it must be due from England rather than America; but in my opinion England was not under any very great obligations to them, since it was by their misrepresentations and bad counsels she had been drawn into this miserable war. And that if an account was to be brought against us for their losses, we should more than balance it by an account of the ravages they had committed all along the coasts of America.

Mr. Oswald agreed to the reasonableness of all this, and said he had, before he came away, told the Ministers that he thought no recompense to those people was to be expected from us; that he had also, in consequence of our former conversation on that subject, given it as his opinion that Canada should be given up to the United States, as it would prevent the occasions of future difference; and as the government of such a country was worth nothing and of no importance, if they could have there a free commerce; that the Marquis of Rockingham and Lord Shelburne, though they spoke reservedly, did not seem very averse to it, but that Mr. Fox appeared to be startled at the proposition. He was, however, not without hopes that it would be agreed to.

We now come to another article of the note, viz.: "On our part commissioners will be named, or any character given to Mr. Oswald, which Dr. Franklin and he may judge conducive to a final settlement of things between Great Britain and America."

This he said was left entirely to me, for he had no will in the affair; he did not desire to be further concerned than to see it *in train*; he had no personal views either of honor or profit. He had now seen and conversed with Mr. Grenville; thought him a very sensible young gentleman and very capable of the business; he did not, therefore, see any further occasion there was for himself; but if I thought otherwise and conceived he might be further useful, he was content to give his time and service in any character or manner I should think proper. I said his knowledge of America, where he had lived, and with every part of which and of its commerce and circumstances he was well acquainted, made me think that in persuading the ministry to things reasonable relating to that country, he could speak or write with more weight than Mr. Grenville, and therefore I wished him to continue in the service; and I asked him whether he would like to be joined in a general commission for treating with all the powers at war with England, or to have a special commission to himself for treating with America only. He said he did not choose to be concerned in treaty with the foreign powers, for he was not sufficiently a master of their

affairs or of the French language, which probably would be used in treating; if, therefore, he accepted of any commission, it should be that of treating with America. I told him I would write to Lord Shelburne on the subject; but Mr. Grenville having some time since despatched a courier, partly on account of the commission, who was not yet returned, I thought it well to wait a few days till we could see what answer he would bring or what measures were taken. This he approved of.

The truth is, he appears so good and so reasonable a man that, though I have no objection to Mr. Grenville, I should be loath to lose Mr. Oswald. He seems to have nothing at heart but the good of mankind and putting a stop to mischief; the other, a young statesman, may be supposed to have naturally a little ambition of recommending himself as an able negociator.

No. 31.—1782, June 4: *Extract from letter, Mr. Grenville to Mr. Fox.*

. . . You will easily see from the tenor of the correspondence we have hitherto had, that what little use I could be of to you here, appeared to me to be in the communication that I had with Franklin. I considered the rest of the negotiation as dependent upon that, and the only possible immediate advantages which were to be expected, seemed to me to rest in the jealousy which the French Court would entertain of not being thoroughly supported in everything by America. The degree of confidence which Franklin seemed inclined to place in me, and which he expressed to me, more than once, in the strongest terms, very much favoured this idea, and encouraged me in wishing to learn from him what might be, in future, ground for a partial connection between England and America; I say in future, because I have never hitherto much believed in any treaty of the year 1782, and my expectation, even from the strongest of Franklin's expressions, was not of an immediate turn in our favour, or any positive advantage from the Commissioners in Europe, till the people of America should cry out to them, from seeing that England was meeting their wishes. It was in this light, too, that I saw room to hope for some good effects from a voluntary offer of unconditional independence to America; a chance which looked the more tempting, as I own I considered the sacrifice as but a small one, and such as, had I been an American, I had thought myself little obliged to Great Britain in this moment for granting, except from an idea that if it was an article of treaty, it would have been as much given by France as by England.

I repeat this only to remind you that, from these considerations, the whole of my attention has been given to Franklin, and that I should have considered myself as losing my time here, if it had not been directed to that subject. I believe I told you in my last that I had very sanguine expectations of Franklin's being inclined to speak out, when I should see him next; indeed, he expressly told me, that he would think over all the points likely to establish a solid reconciliation between England and America, and that he would  
 41 write his mind upon them in order that we might examine them together more in order, confiding, as he said, in me, that

I would not state them as propositions from him, but as being my own ideas of what would be useful to both countries. (I interrupt myself here, to remind you of the obligation I must put you under not to mention this.) For this very interesting communication, which I had long laboured to get, he fixed the fourth day, which was last Saturday; but on Friday morning Mr. Oswald came, and having given me your letters, he went immediately to Franklin, to carry some to him. I kept my appointment at Passy the next morning, and in order to give Franklin the greatest confidence, at the same time, too, not knowing how much Mr. Oswald might have told him, I began with saying, that though under the difficulty which M. de Vergennes and he himself had made to my full power, it was not the moment, as a politician perhaps, to make further explanations till that difficulty should be relieved, yet to show him the confidence I put in him, I would begin by telling him, that I was authorised to offer the independence in the first instance, instead of making it an article of general treaty. He expressed great satisfaction at this, especially he said, because, by having done otherwise, we should have seemed to have considered America, as in the same degree of connection with France, which she had been under with us, whereas America wished to be considered as a power free and clear to all the world; but when I came to lead the discourse to the subject which he had promised four days before, I was a good deal mortified to find him put it off altogether till he should be more ready, and notwithstanding my reminding him of his promise, he only answered that it should be in some days. What passed between Mr. Oswald and me will explain to you the reason of this disappointment. Mr. Oswald told me that Lord Shelburne had proposed to him, when last in England, to take a commission to treat with the American Ministers; that upon his mentioning it to Franklin now, it seemed perfectly agreeable to him, and even to be what he had very much wished, Mr. Oswald adding that he wished only to assist the business, and had no other view; he mixed with this a few regrets that there should be any difference between the two offices, and when I asked upon what subject, he said owing to the Rockingham party being too ready to give up everything. You will observe though—for it is on that account that I give you this narrative—that this intended appointment has effectually stopped Franklin's mouth to me, and that when he is told that Mr. Oswald is to be the Commissioner to treat with him, it is but natural that he should reserve his confidence for the quarter so pointed out to him; nor does this secret seem only known to Franklin, as Lafayette said laughingly yesterday, that he had *just left Lord Shelburne's ambassador at Passy*. Indeed this is not the first moment of a separate negotiation, for Mr. Oswald, suspecting by something that I dropped that Franklin had talked to me about Canada (though, by the by, he never had) told me this circumstance as follows:—When he went to England the last time but one, he carried with him a paper entrusted to him by Franklin under condition that it should be shown only to Lord Shelburne and returned into his own hands at Passy. This paper, under the title of “Notes of a Conversation,” contained an idea of Canada being spontaneously ceded by England to the thirteen provinces, in order that Congress might sell the unappropriated lands and make a fund thereby, in order to compensate the damages done by the English



Army, and even those too sustained by the Royalists; this paper, given with many precautions for fear of its being known to the French Court, to whom it was supposed not to be agreeable, Mr. Oswald showed to Lord Shelburne, who, after keeping it a day as Mr. Oswald supposes, to show to the King, returned it to him, and it was by him brought back to Franklin. I say nothing to the proposition itself, to the impolicy of bringing a *strange* neighbourhood to the Newfoundland fishery, or to the little reason that England would naturally see, in having lost thirteen provinces, to give away a fourteenth; but I mention it to show you an early trace of separate negotiation which perhaps you did not before know.

Under these circumstances, I felt very much tempted to go over, and explain them to you *vivâ voce* rather than by letter, and I must say, with the farther intention of suggesting to you the only idea that seems likely to answer your purpose, and it is this: the Spanish Ambassador will, in a day or two, have the powers from his Court; the Americans are here, so are the French; why should you not, then, consider this as a Congress in full form, and send here a person of rank, such as Lord Fitzwilliam (if he would come), so as to have the whole negotiation in the hands of one person? You would by that means recover within your compass the essential part, which is now out of it; nor do I see how Lord Shelburne could object to such an appointment, which would, in every respect, much facilitate the business. Let me press this a little strongly to you, for another reason. You may depend upon it, people here have already got an idea of a difference between the two offices; and consider how much that idea will be assisted by the embarrassments arising from two people negotiating to the same purpose, but under different and differing authorities, concealing and disguising from each other what, with the best intentions, they could hardly make known, and common enough to each.

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Once more I tell you, I cannot fight a daily battle with Mr. Oswald and *his* secretary; it would be neither for the advantage of the business, for your interest or your credit, or mine, and even if it was, I could not do it.

Concluding, then, the American business as out of the question, which personally I cannot be sorry for, you surely have but one of two things to do; either to adopt the proposition of a new *dignified* Peer's appointment, which being single, may bring back the business to you by comprehending it all in one; or Lord Shelburne must have his minister here, and Mr. Fox his, by doing which Mr. Fox will be pretty near as much out of the secret—at least, of what is most essential—as if he had nobody here, and the only real gainers by it will be the other Ministers, who cannot fail to profit of such a jumble. . . .

Mr. Grenville came according to appointment. Our conversation began by my acquainting him that I had seen the Count de Vergennes, and had perused the copy left with him of the power to

treat. That after what he, Mr. Grenville, told me of its being to treat with France *and her allies*, I was a little surprised to find in it no mention of the allies, and that it was only to treat with the King of France and his ministers; that at Versailles there was some suspicion of its being intended to occasion delay, the professed desire of a speedy peace being, perhaps, abated in the British court since its late successes; but that I imagined the words relating to the allies might have been accidentally omitted in transcribing, or that perhaps he had a special power to treat with us distinct from the other. He answered that the copy was right, and that he had no such power in form, but that his instructions were full to that purpose, and he was sure the ministers had no desire of delay, nor any of excluding us from the treaty, since the greatest part of those instructions related to treating with me. That, to convince me of the sincerity of his court respecting us, he would acquaint me with one of his instructions, though, perhaps, the doing it now was premature, and therefore a little inconsistent with the character of a politician, but he had that confidence in me that he should not hesitate to inform me (though he wished that at present it should go no further), *he was instructed to acknowledge the independence of America previous to the commencement of the treaty.* And he said he could only account for the omission of America in the POWER by supposing that it was an old official form, copied from that given to Mr. Stanley when he came over hither before the last peace. Mr. Grenville added that he had, immediately after his interview with the Count de Vergennes, despatched a courier to London, and hoped that with his return the difficulty would be removed. . . .

Mr. Grenville then discoursed of our resolution not to treat without our allies. This, says he, can only properly relate to France, with whom you have a treaty of alliance, but you have none with Spain, you have none with Holland. If Spain and Holland, and even if France should insist on unreasonable terms of advantage to themselves, after you have obtained all you want, and are satisfied, can it be right that America should be dragged on in a war for their interest only? He stated this matter in various lights, and pressed it earnestly. I resolved from various reasons to evade the discussion, therefore answered, that the intended treaty not being yet begun, it appeared unnecessary to enter at present into considerations of that kind. The preliminaries being once settled, and the treaty commenced, if any of the other powers should make extravagant demands on England, and insist on our continuing the war till those were complied with, it would then be time enough to consider what our obligations were, and how far they extended. The first thing necessary was for him to procure the full powers, the next for us to assemble the plenipotentiaries of all the belligerent parties, and then propositions might be mutually made, received, considered, answered, or agreed to. . . .

We then spoke of the reconciliation; but his full power not being yet come, I chose to defer entering upon that subject at present. I told him I had thoughts of putting down in writing the particulars that I judged would conduce to that end, and of adding my reasons that this required a little time, and I had been hindered by accidents, which was true, for I had begun to write, but had postponed it on account of his defective power to treat; but I promised to finish it

as soon as possible. He pressed me earnestly to do it, saying an expression of mine in a former conversation, that there still remained *roots of good will* in America towards England, which, if properly taken care of, might produce a reconciliation, had made a great impression on his mind, and given him infinite pleasure, and he hoped I would not neglect furnishing him with the information of what would be necessary to nourish these *roots*, and could assure me that my advice would be greatly regarded. . . .

No. 33.—1782, June 5: *Extract from Lord Shelburne's instructions to Sir Guy Carleton and Vice-Admiral Digby in America.*

WHITEHALL, 5th June, 1782.

It naturally therefore and necessarily became a chief consideration with His Majesty's Ministers to draw from the information they were possessed of, some probable clue by which the real disposition and views of the American Deputies might be discovered, in order to form a judgment how far the expectations of the House of Bourbon were well founded, and whether if the great ground of contention between Great Britain and the revolted Provinces was removed, either America or her Delegates would in such case be willing, or think themselves bound to risk the full enjoyment of their favorite Object by adhering to and supporting all the Demands of France and Spain.

The Turn of Dr. Franklin's Conversation at several times both with Mr. Grenville and Mr. Oswald had encouraged a belief entirely negative to these suppositions, especially, when he had expressly said that—“*When we had allowed the Independence of America, the Treaty she had made with France for gaining it ended, and none remained but that of Commerce, which we too might make*”  
 43 “*if we pleased.*” He had also said at another time, that “*there should, he thought, be a great Difference made in a Treaty between England and America, and one between England and France, which had been always at Enmity*”; repeating frequently that great effects might be obtained by some things being done *spontaneously* from England.

Upon these and other considerations, his Majesty has been induced to give a striking proof of his royal magnanimity and disinterested wish for the restoration of peace, by commanding his Ministers to direct Mr. Grenville, that *the independency of America should be proposed by him in the first instance, instead of making it a condition of a general Treaty.*

Mr. Oswald was sent back to Paris on the 26th ult, with this important Commission, and Mr. Grenville is instructed to make all the advantage possible of the concession which His Majesty from His ardent Desire of Peace has been induced to make with respect to the Independency of the thirteen States, especially by pressing Dr. Franklin's own idea, *that the object of the Treaty of Alliance with France being attained, the Treaty determined.*

I have given a confidential information to you of these particulars, that you may take such measures as shall appear to you most advisable for making a direct communication of the substance of the same

either immediately to Congress, or through the medium of General Washington, or in any other manner, which you may think most likely to impress the well-disposed part of America with the fairness and liberality of his Majesty's proceedings in such great and spontaneous concessions.

The advantages which we may expect from such communication are:—that America, once apprised of the King's disposition to acknowledge the independence of the thirteen States, and of the disinclination in the French Court to terminate the war, must see that it is from this moment to be carried on with a view of negotiating points in which she can have no concern, whether they regard France, or Spain and Holland, at the desire of France; but some of which, on the contrary, may be in future manifestly injurious to the interests of America herself—That if the negotiation is broke off, it will undoubtedly be for the sake of some of those Powers, and not of America, whose object is accomplished the instant she accepts of an independence, which is not merely held out to her in the way of negotiation by the Executive Power, but a distinct unconditional offer arising out of the resolutions of Parliament, and therefore warranted by the sense of the nation at large.

These facts being made notorious, it is scarcely conceivable that America, composed as it is, will continue efforts under French direction, and protract the distresses and calamities which it is well known the war has subjected her to. It is to be presumed that from that moment she will look with jealousy upon the French troops in her country, who may from allies become dangerous enemies.

\* \* \* \* \*

You must convince them that the great Object of this Country is, not only Peace, but Reconciliation with America on the noblest Terms and by the noblest Means.

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No. 34.—1782, June 9: *Extract from letter, Mr. Oswald to Lord Shelburne.*

. . . I have nothing of business to trouble your Lordship with. Only that upon one occasion, since my last arrival, the doctor said, they, the Americans, had been totally left out in Mr. Grenville's powers, as they extended only to treating with the Minister of France. I told him the deficiency would, no doubt, be supplied in due time as might be supposed, since in the mean while they had been assured by Mr. Grenville, that His Majesty had agreed to grant Independence *in the first instance*. The Doctor said it was true, and he was glad of it, and supposed that was all that could be done until the Act depending in Parliament was passed. . . .

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No. 35.—1782, June 10: *Extract from letter, Mr. Fox to Mr. Grenville.*

. . . I have taken upon me . . . to show your letter to Lord Rockingham. the Duke of Richmond and Lord John [Cavendish], who are all as full of indignation at its contents as one might reason-

ably expect honest men to be. We are now perfectly resolved to come to an explanation upon the business, if it is possible so to do without betraying any confidence reposed in me by you, or in you by others. The two principal points which occur are the paper relative to Canada, of which I had never heard till I received your letter, and the intended investment of Mr. Oswald with full powers, which was certainly meant for the purpose of diverting Franklin's confidence from you into another channel. With these two points we wish to charge Shelburne directly; but pressing as the thing is, and interesting as it is both to our situations and to the affairs of the public, which I fear are irretrievably injured by this intrigue, and which must be ruined if it is suffered to go on, we are resolved not to stir a step till we hear again from you, and know precisely how far we are at liberty to make use of what you have discovered. If this matter should produce a rupture, and consequently become more or less the subject of public discussion, I am sensible the Canada paper cannot  
 44 be mentioned by name; but might it not be said that we had discovered that Shelburne had withheld from our knowledge matters of importance to the negotiation? . . .

You see what is our object, and you can easily judge what sort of evidence will be most useful to us. When the object is attained, that is, when the duplicity is proved, to what consequences we ought to drive, whether to an absolute rupture, or merely to the recal of Oswald and the simplification of this negotiation, is a point that may be afterwards considered. I own I incline to the more decisive measure, and so, I think, do those with whom I must act in concert.

\* \* \* \* \*

The King of Prussia is certainly inclined to be our friend, but he urges and presses to make peace if possible; if we could once bring the treaty to such a point as the stating the demands on each side to him, and we could have his approbation for breaking it off, I think it not impossible but the best consequences might follow; and with regard to North America, it is surely clear to demonstration, that it is of infinite consequence that it should be publicly understood who is to blame if the war continues. I do hope, therefore, that you will at all events stay long enough to make your propositions, and to call upon them to make others in return. . . .

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No. 36.—1782, June 10: *Extract from letter, Mr. Fox to Mr. Grenville.*

. . . With respect to the contents of your last dispatch, you certainly conceive it rightly, that you are no longer to mention the Independence of America as a cession to France, or as a conditional article of a general treaty; but at the same time you will not fail to observe to the French Ministry that the Independence of America *is* proposed to be acknowledged, and to remark that this being done spontaneously, which they have at different times and particularly in their last answer to the Imperial Courts emphatically called the object of the war, little difficulty ought to remain with regard to other points which may be considered rather as collateral and incidental than as principal in the present dispute. . . .

No. 37.—1782, June 19: *Extract from letter, Mr. Adams (at The Hague) to Dr. Franklin.*

. . . . The permanent friendship of the Dutch may be easily obtained by the United States, that of England never; it is gone with the days before the flood. If we ever enjoy the smallest degree of sincere friendship again from England I am totally incapable of seeing the character of a nation or the connexion of things; which, however, may be the case, for what I know. . . .

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No. 38.—1782, June 15: *Extract from Dr. Franklin's Journal.*

. . . Mr. Oswald left me about noon, and soon after Mr. Granville came, and acquainted me with the return of his courier, and that he had brought the full powers. That he, Mr. Grenville, had been at Versailles and left a copy with Count de Vergennes. That the instrument was in the same terms with the former, except that after the power to treat with the King of France, or his ministers, there was an addition of words, importing a power to treat with the ministers of any other prince or *state* whom it might concern. That Count de Vergennes had at first objected to these general words as not being particular enough, but said he would lay it before the king, and communicate it to the ministers of the belligerent powers, and that Mr. Grenville should hear from him on Monday. Mr. Grenville added that he had further informed Count de Vergennes of his being now instructed to make a proposition as a basis for the intended treaty, viz., the peace of 1763; that the proposition intended to be made under his first powers, not being then received, was now changed, and instead of proposing to allow the independence of America on condition of England's being put into the situation she was in at the peace of 1763, he was now authorised to *declare the independence of America previous to the treaty* as a voluntary act, and to propose separately as a basis the treaty of 1763. This also Count de Vergennes undertook to lay before the king and communicate to me.

Mr. Grenville then said to me he hoped all difficulties were now removed and that we might proceed in the good work. I asked him if the enabling bill was passed. He said no; it passed the Commons, and had been once read in the House of Lords, but was not yet completed. I remarked that the usual time approached for the prorogation of Parliament, and possibly this business might be omitted. He said there was no danger of that; the Parliament would not rise this year till the middle of July; the India affairs had put back other business which must be done, and would require a prolongation of the session till that time. I then observed to him that, though we

45 Americans considered ourselves as a distinct independent power or state, yet, as the British Government had always hitherto affected to consider us only as rebellious subjects and as the enabling act was not yet passed, I did not think it could be fairly supposed that his court intended, by the general words *any other prince or state*, to include a people whom they did not allow to be a state, and that, therefore I doubted the sufficiency of his power as to

treating with America, though it might be good as to Spain and Holland. He replied that he himself had no doubt of the sufficiency of his power and was willing to act upon it. I then desired to have a copy of the power, which he accordingly promised me.

He would have entered into conversation on the topic of reconciliation, but I chose still to waive it till I should find the negotiation more certainly commenced. . . .

No. 39.—1782, June 16–21: *Extract from letter, Mr. Grenville to Mr. Fox.*

[Private.]

PARIS, June 16th, 1782.

DEAR CHARLES: I received your letter of the 10th, by Ogg, on the night of the 14th, and would have sent him back as immediately as you seemed to wish, but having no other messenger to carry back Mons. de Vergennes' answer, I was obliged to keep him till he could be the bearer of that likewise. I can easily conceive the embarrassment occasioned to you by my letter, and have so much confidence in the honour of the persons to whom you communicated it, that I am not under the smallest uneasiness on that account. The explanation, however, that you wish to come to, certainly has its difficulties, and amongst them some so sacred that unless they can be kept altogether clear, you cannot but agree with me in thinking that they must be buried at least in silence, though not in oblivion. In order, therefore, that you may see into every part of this business, I will, as you desire, state in the most explicit manner the circumstances of it, as far as I think they affect any confidence reposed in me. In the first place, then, you will have observed that although Franklin has actually made me no confidence (owing as I believe without doubt to the reasons I stated,) yet as the communication he had said he would make to me, was of the most confidential nature, and in full trust that the subjects which he should mention should not be given as propositions coming from him, I think it would be a breach of that confidence to make it known even that he had promised to hold such a conversation with me; and therefore to charge Lord Shelburne with having diverted from me that expected communication, would be to proclaim Franklin's promise to me, which promise, though it has not been followed up, I cannot think myself at liberty to quote. The delicacy of Franklin's situation with respect to the French court, was, as he said, the ground of the caution which he observed; and which nevertheless he was inclined to risque in my trust; he would certainly have both to repent and to complain, if anything on my part should lead to betray even the confidential disposition he had entertained. These reasons you will I am sure agree with me in considering as decisive against any mention being to be made of the expectations I had formed from the conversations I was to have had with Franklin. The Canada paper is not perhaps quite under the same circumstances: the only knowledge I have of it is from Oswald, and as I before told you, I had it from him at a moment when I fancy he apprehended that I had heard or should hear of it from Franklin, no other reason can account for his not mentioning it from the end of April till the 31st of May; he told it me under no express limitation of confidence: the words in which he introduced it were—

"I think it right you should know"; and I am perfectly sure that he asked from me no engagement of secrecy, nor do I conceive myself under any with regard to him, other than that general secrecy which is always attached to business of a confidential nature, such as was the business I related to you. I recollect asking if he had showed the paper to you; he said no, but did not add any injunction to me not to do so, and indeed if he had, I should have stated to him the impossibility of my keeping from you a circumstance of that importance, or of my becoming by my silence in it a separate party to a business which it was my duty fully and entirely to lay before you and receive from you. Nor indeed at this moment is the knowledge of it confined to Lord Shelburne, as I am pretty sure Oswald told me that Lord Ashburton was with Lord Shelburne when he, Oswald, asked if he might give any answer to Franklin about the paper, or rather observed that he supposed he could not then have any answer to it. Under these circumstances the difficulty with regard to the Canada paper, of which I have no copy, lies possibly more in the indelicacy, and perhaps bad policy, of bringing forward Franklin where he wished so much not to appear than in quoting it from me. I do not wish to be quoted if there exists the least doubt whether I should; but I cannot more exactly explain to you the whole extent of that doubt, than by showing you that it does not exist in any specific obligation on my part, but only in the nature of what was told to me; the subject itself carrying with it, as you will see, many reasons for secrecy, and every mark of it in the manner of conducting it: but as to positive engagement or obligation upon this subject I have none. The remaining circumstance of the intention mentioned to Mr. Oswald by Lord Shelburne of giving him a commission if it should be necessary, stands altogether clear of the slightest shade of difficulty upon the point of confidence: indeed at the time I wrote you word of it I did not imagine I was informing you of anything new or unknown to you, and only so far meant to dwell upon it as to regret its happening precisely at the instant when it was most important it should not. I apprehended that Lord Shelburne might have already expressed such an intention to the rest of the King's Ministers, upon the ground of the American share of this business; which ground, in the present stage of it, I thought possibly you had not found it easy to object to. In this idea you will find that I have written, and in this idea it was that Lord Fitzwilliam's appointment occurred to me, not to prevent a *clandestine* negotiation, but to unite a *separated* one, always imagining that you knew of, but did not resist, the intended commission to Mr. Oswald, and therefore hinting the expediency of superseding it, by giving to another person an appointment of such rank and magnitude as should include a power which it seems neither for the public interest, nor yours and your friends' interests, to leave separate and distinct. To return, however, to the point of confidence: upon this last subject, there is none, and you are certainly at full liberty to proclaim at Charing Cross, that Lord Shelburne told Mr. Oswald he supposed he would not object to a commission, if it should be necessary, and that, since his last return to Paris, Mr. Oswald has told me he found it very much Franklin's wish likewise. If I may repeat, therefore, in a few words, what I have tried to express to you in a good many, it is, that as to Franklin's first intention of a private and confidential communication



with me, I hold myself so engaged in secrecy to him, that I think it would be a breach of confidence in me to have that intention at all spoken of. As to the Canada paper, I leave it, with the comment I have made upon it, altogether to your discretion; and as to the intended commission, you are certainly at full liberty to say of it what you please. I have it not in my power to give you any additional proofs of sinister management in this business. I seldom see Oswald, though upon good terms with him, and have seen Franklin, since Oswald's coming, but once, when he was as silent as ever, notwithstanding my reminding him of his promise, so that I cannot but think that business altogether irretrievable; but neither do I know what you will gain by forcing Oswald's return; indeed, I am inclined to think it might be much more prudent to save appearances by leaving him here till you shall have completed your purpose of receiving the propositions you wish, or the refusal you wish, from Versailles. Perhaps, politically speaking, you may not think it wise to make the conduct, or rather misconduct, of a foreign negotiation, the ground of a domestic rupture, which may betray too much weakness and disunion; but this is too delicate a subject for me to say anything upon, more than to assure you, that whatever is your determination about it, you will not find me shrink from the part I have to take in it. And one word here about the desire I have expressed to return to England. It is impossible not to say that I feel that desire in the strongest degree. I would not speak peevishly about my disappointment in the unlucky check I have met with, but I think you will agree, that the real service it might, perhaps, have been my good fortune to have been assisting in, is by that check completely annihilated, nor can any step now taken recover or retrieve it; and that consideration weighs pretty heavily in a situation in itself not agreeable to me: but if I repeat this now, it is to keep you awake to the earnest solicitations I make of returning in the first moment you may think it practicable; till then, you need have no apprehension of seeing me, but may trust that no personal motives, however strong, can weigh with me against the important reasons, as well as the desire you express, for my continuing something longer at Paris. I am writing to you on the 16th, waiting impatiently for M. de Vergennes' answer, which he gave me reason to hope I shall have to-morrow.

June 21st.—I have been waiting day after day, and have not got my answer till a few hours ago. I am sorry I have kept you so long, but you see it was impossible to avoid it.

\* \* \* \* \*

Oswald affects to consider me as fully authorised now, but I believe expects different news as soon as the Independence Bill has passed. Yet I cannot help thinking you had better leave him where he is; his going away will mend nothing. Adieu.

Ever very affectionately yours,

THOMAS GRENVILLE.

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No. 40.—1782, June 17: *Extract from Dr. Franklin's Journal.*

I find myself in some perplexity with regard to these two negotiators. Mr. Oswald appears to have been the choice of Lord Shelburne, Mr. Grenville that of Mr. Secretary Fox. Lord Shelburne is said to have lately acquired much of the King's confidence. Mr. Fox

calls himself the minister of the people, and it is certain that his popularity is lately much increased. Lord Shelburne seems to wish to have the management of the treaty, Mr. Fox seems to think, in his department. I hear that the understanding between these ministers is not quite perfect. Mr. Grenville is clever, and seems to feel reason as readily as Mr. Oswald, though not so ready to own it. Mr. Oswald appears quite plain and sincere; I sometimes a little doubt Mr. Grenville. Mr. Oswald, an old man, seems to have no desire but that of being useful in doing good. Mr. Grenville, a young man, naturally desirous of acquiring reputation, seems to aim at that of being an able negociator. Mr. Oswald does not solicit to have any share in the business, but, submitting the matter to Lord Shelburne and me, expresses only his willingness to serve if we think he may be useful, and is equally willing to be excused if we judge there is no occasion for him. Mr. Grenville seems to think the whole negotiation committed to him, and to have no idea of Mr. Oswald's being concerned in it, and is, therefore, willing to extend the expressions in his commission so as to make them comprehend America, and this beyond what I think they will bear. I imagine we might, however, go on very well with either of them, though I rather should prefer Oswald; but I apprehend difficulties if they are both employed, especially if there is any misunderstanding between their principals. I must, however, write to Lord Shelburne, proposing something in consequence of his offer of vesting Mr. Oswald with any commission which that gentleman and I should think proper.

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[1782, June 19: *The British Enabling Act, 22 Geo. III, cap. 46, was passed: see appendix to British Case, p. 554.*]

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47 No. 41.—1782, June 26: *Extract from Dr. Franklin's Journal.*

Went to see Mr. Oswald. I showed him the draft of a letter to be addressed to him instead of Lord Shelburne, respecting the commission or public character he might hereafter be vested with; this draft was founded on Lord Shelburne's memorandums, which Mr. Oswald had shown to me, and this letter was intended to be communicated by him to Lord Shelburne. Mr. Oswald liked the mode, but rather chose that no mention should be made of his having shown me Lord Shelburne's memorandums, though he thought they were given to him for that purpose. So I struck that part out, and new-modelled the letter, which I sent him next day, as follows:—

PASSY, June 27, 1782.

TO RICHARD OSWALD,

SIR: The opinion I have of your candor, probity, and good understanding, and good will to both countries, made me hope you would have been vested with the character of plenipotentiary to treat with those from America. When Mr. Grenville produced his first commission, which was only to treat with France, I did imagine that the other to treat with us was reserved for you, and kept only till the enabling bill should be passed. Mr. Grenville has since received a second commission, which, as he informs me, has additional words, empowering him to treat with the ministers of any other *prince or state* whom

it may concern, and he seems to understand that those general words comprehend the United States of America. There may be no doubt that they may comprehend Spain and Holland, but as there exists various public acts by which the government of Britain denies us to be States, and none in which they acknowledge us to be such, it seems hardly clear that we could be intended at the time the commission was given, the *enabling act* not being then passed. So that though I can have no objection to Mr. Grenville, nor right to make it if I had any, yet as your long residence in America has given you a knowledge of that country, its people, circumstances, commerce, &c., which, added to your experience in business, may be useful to both sides in facilitating and expediting the negotiation, I can not but hope that it is still intended to vest you with the character above mentioned, respecting the treaty with America, either separately or in conjunction with Mr. Grenville, as to the wisdom of your ministry may seem best. Be it as it may, I beg you would accept this line as a testimony of the sincere esteem and respect with which, &c.

B. FRANKLIN.

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No. 42.—1782, June 26–30: *Extracts from the Duke of Grafton's Autobiography.*

On the 26th of June a Cabinet was assembled in the morning at my house: . . . At another Council in the evening of the same day, it was agreed that, with every testimony of our earnest desire of acting with the Empress of Russia, in the closest connexion, yet, that the *armed neutrality* cannot be *formally* admitted. It was also here again explained, that independence to America was offered, in order to obtain peace, or to separate the Americans from their allies. The little prospect we then saw of succeeding in the French negotiation, occasioned us to desire as earnestly to bring it to a short issue, as the Court of Versailles was endeavoring to protract it.

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At a Cabinet held on the 30th, the day previous to that on which Lord Rockingham died, Mr. Fox pressed us earnestly to give separately our opinion on the same point he had urged on Wednesday, relatively to the independence of America being freely granted, even without a treaty for a peace. The majority was for a treaty accompanying the *surrender* of the *claim*; but that it was also advisable that independence should in the first instance be allowed, as the *basis* to treat on. This decision not coming up to Mr. Fox's ideas: he declared, with much regret, that his part was taken to quit his office, which the illness alone of Lord Rockingham occasioned him for the present to hold.\*

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No. 43.—1782, July 8: *Extract from letter, Mr. Oswald to Lord Shelburne.*

PARIS Monday 8th July 1782

MY LORD: I beg leave, under this cover, to transmit to your Lordship a letter directed to myself from Dr. Franklin, which he sent me ten days ago, on the day it is dated; and I will also take notice of what passed between him & me in consequence of it.

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\* Lord Rockingham, the Prime Minister, died on 1st July 1782. He was succeeded by Lord Shelburne; Mr. Thomas Townshend becoming Colonial Secretary. Mr. Fox resigned and was followed by others.

48 Two days before that letter was sent to me, the doctor called upon me, and said that agreeable to the memorandum I shewed him, he had wrote me a letter which I might send to your Lordship if I thought fit. Upon the perusal of it, I observed he said that I might be appointed singly for the Colonies, or jointly with Mr. Grenville; or included in Mr. Grenville's general Commission to treat with all parties concerned in the war.

\* \* \* \* \*

Wishing to have an opportunity of talking to him on the subject of it, I went out to his house on Saturday, the 6th, and stayed with him about an hour.

After thanking him for his good opinion of me, as expressed in that letter, & giving the reason for its not being forwarded, I told him that this interval of delay had given occasion to sundry questions in my own mind as to the business we should have to treat about, in case I should be appointed, & should undertake the office he was pleased to recommend in that letter.

With France and the other parties, I was sensible there must be many points to be settled. But with respect to the Colonies, I told him I could not easily conceive how there could arise any variety of subject to treat upon. That as to a final conclusion, the treaty with France might make it necessary to wait the event of a determination as to them, so as both might be included in one settlement, but until then, I could not see there would be much field for negotiation between Great Britain and the Commissioners of the Colonies, after their Independence had been granted; and which being in a manner acknowledged, I had been in hopes there remained no questions of either side that would require much discussion. If he thought it would be otherwise, I told him I would be much obliged to him, to give me a hint of them, as the question could not but be material to me, in considering whether I might venture upon such a charge. That this I would request of him as a friend, & I hoped I might also expect of him as a friend to England; which I must still suppose him to be. And in which I was not singular believing it was the universal opinion at home, and particularly with regard to your Lordship, who I had reason to be assured had the greatest confidence in his good intentions towards our country. That I did not just then desire, or expect an answer, but if he would name any other day I would wait on him, in hopes of having his opinion and advice upon the particular subject of this Colony Treaty, and his sentiments in general upon the whole of these affairs. Which I was certain would be of service in guiding us how to proceed in the safest and quickest course to a final conclusion of this unhappy business. That I had too just a notion of his character to expect any information but such as would not be inconsistent with particular engagements. But where that did not interfere, his granting the favour I asked might be doing a good office to all parties concerned. For I could not help thinking that the Commissioners of the Colonies had it much in their power to give dispatch to the general Treaty, & to end it on just and reasonable terms, even notwithstanding their particular treaty with France. Upon this the doctor said, they had no treaty with France but what was published. I said I was glad it was so since I saw nothing there, however guarded against a separate peace that should direct or con-

trol the conditions of a treaty between them and Great Britain, excepting the provision for the great article of Independence which was now out of the question. . . .

After allowing me to go on in this way, he said there were some things which he wished England to think of, or to agree to (I forget which), and yet he should not like that they were known to have been suggested by him. At last he told me, if I would come out to his house on Wednesday, the 10th, he would show me a minute of some things which he thought might be deserving of notice upon the occasion. . . .

Meantime he read to me some late resolutions of the Assembly of Maryland in May, just come to hand; declaring against a separate peace, or peace of any kind with England until their independence is acknowledged. . . .

PS. . . . He again mentioned the affair of Canada and said there would be no solid peace while it remained an English colony.

No. 44.—1782, July 9: *Extract from letter, Mr. Grenville to Lord Shelburne.*

. . . Mr. Franklin the other day, for the first time gave me to understand that America must have her share in the Newfoundland Fishery, and that the limits of Canada would likewise be a subject for arrangement. He seems much disinclined to an idea he expects to be stated, of going into an examination for the mutual compensation of the losses of individuals, insisting, perhaps with reason, upon the endless detail that would be produced by it; . . .

No. 45.—1782, July 10: *Extract from letter, Mr. Oswald to Lord Shelburne.*

PARIS Wednesday 10th July 1782.

MY LORD: In consequence of Dr. Franklin's appointment, as mentioned in my letter of the 8th under this cover, I went out to his house this morning and stayed near two hours with him, with a view  
49 of obtaining the information and advice I wished for, as to the terms and conditions upon which he thought a treaty between Great Britain and the commissioners of the colonies might be carried on, and proceed to a conclusion. Having reminded him of what he in a manner promised on this head on the 6th, he took out a minute, and from it read a few hints or articles. Some he said as necessary for them to insist on; others which he could not say he had any orders about, or were not absolutely demanded, and yet such as it would be advisable for England to offer for the sake of reconciliation, and her future interest, viz. :—

1. Of the first class, *necessary* to be granted. Independence full and complete in every sense to the 13 States, and all troops to be withdrawn from thence.

2. A settlement of the boundaries of *their* colonies, and the loyal colonies.

3. A confinement of the boundaries of Canada, at least to what they were, before the last Act of Parliament, I think in 1774, if not to a still more contracted State, on an ancient footing.

4. A freedom of fishing on the banks of Newfoundland and elsewhere, as well for fish as whales. I own I wonder'd he should have thought it necessary to ask for this privilege. He did not mention the leave of drying fish on shore in Newfoundland, and I said nothing of it. I don't remember any more articles which he said they would insist on, or what he called necessary for them to be granted.

Then as to the *advisable* articles, or such as he would as a friend recommend to be offered by England, viz. :—

1. To indemnify many people who had been ruined by towns burnt and destroyed. The whole might not exceed the sum of five or six hundred thousand pounds. I was struck at this. However, the doctor said, though it was a large sum, it would not be ill-bestowed; as it would conciliate the resentment of a multitude of poor sufferers, who could have no other remedy, and who without some relief, would keep up a spirit of secret revenge and animosity for a long time to come, against Great Britain: whereas a voluntary offer of such reparation, would diffuse an universal calm and conciliation over the whole country.

2. Some sort of acknowledgment in some public Act, of Parliament or otherwise, of our error in distressing those countries so much as we had done. A few words of that kind the doctor said, would do more good than people could imagine.

3. Colony ships and trade to be received and have the same privileges in Britain and Ireland, as British ships and trade. I did not ask any explanation on that head for the present. British and Irish ships in the colonies to be in like manner on the same footing with their own ships.

4. Giving up every part of Canada.

. . . He showed me a copy of the enabling Bill as it is called, and said he observed the word revolted was left out and likewise added—that the purpose of it was to dispense with Acts of Parliament which they were indifferent about, and that now they were better prepared for war, and more able to carry it on than ever they were. That he had heard we entertained some expectation of retaining some sort of sovereignty over them, as His Majesty had of Ireland: and that if we thought so, we should find ourselves much disappointed, for they would yield to nothing of that sort. . . .

From this conversation I have some hopes, my Lord, that it is possible to put an end to the American quarrel in a short time, and when that is done, I have a notion that a treaty with the other Powers will go more smoothly on. The doctor did not, in the course of the above conversation, hesitate as to a conclusion with them, on account of any connection with those other States; and in general seemed to think their American affair must be ended by a separate Commission. On these occasions I said I supposed, in case of such commission he meant that the power of granting independence, would be therein expressly mentioned. He said, no doubt, I hinted this, thinking it better in the power of treating to include independence, than to grant independence separately, and then to treat about other matters with the commissioners of such independent States, who by such grant are on the same footing with the Ministers of the other Powers. By anything the

doctor said I did not perceive, he made any account of this distinction; and I did not think it proper to say anything more about it. . . . I remember the doctor in a former proposal in April hinted that a cession of the back lands of Canada, would raise a sum, which would make some reparation to the sufferers on both sides. Now, he says, one of the *necessary* articles is a cession of these back lands, without any stipulation for the loyal sufferers.

And as an *advisable* article, a gift of 5 or 6 hundred thousand pounds, to indemnify the sufferers on their side. I should hope he would be persuaded to alter that part of the plan.

I have the honour to be, My Lord

Your Lops. most obedient Humble servant,

RICHARD OSWALD.

50 No. 46.—1782, July 11: *Extract from letter, Mr. Oswald to Lord Shelburne.*

. . . With respect to the Commissioners of the Colonies, our conduct towards them, I think, ought to be of a style somewhat different. They have shown a desire to treat, and to end with us on a separate footing from the other Powers, and I must say in a more liberal way, or at least with a greater appearance of feeling for the future interests and connections of Great Britain, than I expected. I speak so from the text of the last conversation I had with Mr. Franklin, as mentioned in my letter of yesterday. And therefore we ought to deal with them tenderly, and as supposed conciliated friends, or at least well disposed to a conciliation. And not as if we had anything to give them, that we can keep from them, or that they are very anxious to have. Even Dr. Franklin himself, as the subject happened to lead that way, as good as told me yesterday, that they were their own masters, and seemed to make no account of the grant of independence as a favour. I was so much satisfied before hand of their ideas on that head that I will own to your Lordship, I did not read to the doctor that part of your letter, wherein you mention that grant as if it in some shape challenged a return on their part. When the doctor pointed at the object of the Enabling Bill, as singly resting on a dispensation of Acts of Parliament they cared not for, I thought it enough for me to say, they had been binding and acknowledged. To which no answer was made. When the doctor mentioned the report, as if there was an expectation of retaining the sovereignty, I ventured a little farther, (though with a guarded caution) to touch him on the only tender side of their supposed present emancipation and said, that such report was possibly owing to the imaginations of people upon hearing of the rejoicings in America on the cessation of war—change of the Ministry &c.—which they might conclude would have some effect in dividing the provinces, and giving a different turn to affairs; as no doubt there was a great proportion of the people, notwithstanding all that had happened, who, from considerations of original affinities, correspondence and other circumstances, were still strongly attached to England, &c. To this also, there was no answer made. . . .

P. S. This, the gentleman told me, led the doctor to express himself very strongly as to his desire of quick dispatch, as he wanted much to go home and have the chance of a few years repose, having but a short time to live in the world, and had also much private business to do. I should therefore hope it may be possible soon to bring their business near to a final close, and that they will not be any way stiff as to those articles he calls *adviseable*, or will drop them altogether. Those he calls necessary will hardly be any obstacle. . . .

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No. 47.—1782, July 12: *Letter, Dr. Franklin to Mr. Oswald.*

PASSY July 12. 1782

SIR I enclose a letter for Lord Shelburne, to go by your courier, with some others, of which I request his care. They may be put into the penny post. I have received a note informing me, that "some opposition given by his Lordship to Mr. Fox's decided *plan of unequivocally acknowledging American independency*, was one cause of that gentleman's resignation"; this, from what you have told me, appears improbable. It is further said "that Mr. Grenville thinks Mr. Fox's resignation will be fatal to the present negotiation." This, perhaps, is as groundless as the former. Mr. Grenville's next courier will probably clear up matters. I did understand from him that such an acknowledgement was intended previous to the commencement of the treaty; and until it is made, and the treaty formally begun, propositions and discussions seem on consideration to be untimely, nor can I enter into particulars without Mr. Jay, who is now ill with the influenza. My letter, therefore, to his Lordship, is merely complimentary on his late appointment.

I wish a continuance of your health in that at present sickly city, being with sincere esteem, Sir,

your most obedient and most humble servant

B. FRANKLIN.

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No. 48.—1782, July 12: *Extract from letter, Mr. Oswald to Lord Shelburne.*

PARIS 12 July 1782

MY LORD The courier has been in waiting some time for Dr. Franklin's letters. They are just come to hand, with one to myself, which I think proper to send to your Lordship, with the Maryland paper that was inclosed in it.

51 I am glad to see by the doctor's letter, as if he wishes a settlement with them may not be stopped. I think that may be presumed from his sending me this letter, and the explanations therein mentioned.

On the other hand, I cannot but be concerned at this report, which has been conveyed to him, of a reserve intended in the grant of Independence, being the first time I ever heard of it. At least Mr. Grenville did not tell me that his signification on that head was accompanied with any such reservation. And upon the faith of that, I have



in my letters to your Lordship, and in conversation with Dr. Franklin, always supposed that the grant was meant to be absolute and unconditional, which last, however, is a term I never used, thinking such qualification unnecessary. Its being given out that a difference subsisted, and resignations happened on this account, must naturally occasion this hesitation in the Commissioners of the Colonies; and so I see by the doctor's letter to me, he puts a sort of stoppage upon the preliminaries of settlement with them, which had been pretty well sketched out, and defined in his conversation with me on the 10th instant, and until there is a further explanation under your Lordship's authority, on the said head of independence, I am in a manner forbid, in the doctor's letter, to go back upon the plan of that conference, and to claim any right to the propositions thereof, which, if complete independence was meant to be granted, is a little unlucky; and there is reason to regret that any body should have been so wicked as to throw this stumbling block in the way: by which not only peace with the Colonies is obstructed, but the general treaty is suspended, which I cannot help still thinking hangs upon a settlement, with the Colonies. And so by this unlucky interjection, the peace of the country at home is disturbed, and the blame thrown upon the new administration, and upon your Lordship by name. . . .

I have the honour to be My Lord

Your Lops most obedient humble servant,

RICHARD OSWALD.

No. 49.—1782, July 24: *Letter, Dr. Franklin to the Marquis de La Fayette.*

PASSY, July 24, 1782.

DEAR SIR: In answer to your questions, Mr. Oswald is doing nothing, having neither powers nor instructions; and being tired of doing nothing has despatched a courier requesting leave to return. He has, I believe, received no letters since I saw you, from Lord Shelburne. Mr. Grenville's return hither is, I think, doubtful, as he was particularly connected in friendship with Mr. Fox; but if he stays, I suppose some other will be sent, for I do not yet see sufficient reason to think they would abandon the negotiation, though, from appearances, I imagine they are more intent upon dividing us, than upon making a general peace. I have heard nothing further from Mr. Laurens, nor received any paper from him respecting Lord Cornwallis. And since that general's letter, written after the battle of Camden, and ordering not only the confiscation of rebel's estates, but the hanging of prisoners, has been made public, I should not wonder if the Congress were to disallow our absolution of his parole, and call him to America.

With everlasting esteem and respect, I am, dear sir, yours most affectionately,

B. FRANKLIN.

No. 50.—1782, July 24: *Letter, Dr. Franklin to the Comte de Vergennes.*

PASSY, July 24, 1782.

SIR: Enclosed I have the honor of sending to your excellency extracts from two despatches of the British ministry (one of them to the commissioners for restoring peace in America) which are communicated to me by order of Lord Shelburne, expressly for the purpose of restoring confidence between him and me. Your excellency will judge how proper they are for such a purpose, when the first is evidently calculated to create division, not only between France and us, but among ourselves; and the second is contradictory respecting a principal point in the independence.

I am, &c.

B. FRANKLIN.

No. 51.—1782, July 25: *George III's Warrant for Mr. Oswald's First Commission for negotiating Peace.*

George R: Our will and pleasure is, and we hereby authorize and command you forthwith to prepare a bill for our signature, to pass our great seal of Great Britain, in the words or to the effect following, viz.:

George the Third, by the grace of God king of Great Britain, France, and Ireland, defender of the faith, and so forth. To our trusty and well-beloved Richard Oswald, of our city of London, esquire, greeting. Whereas, by virtue of an act passed in the last session of parliament, entitled, "An act to enable his majesty to conclude a peace or truce with certain colonies in North America therein mentioned," it is recited "that it is essential to the interest, welfare and prosperity of Great Britain and the colonies or plantations of New Hampshire, Massachusetts Bay, Rhode Island, Connecticut, New York, New Jersey, Pennsylvania, the lower counties on Delaware, Maryland, Virginia, North Carolina, South Carolina, and Georgia, in North America, that peace, intercourse, trade, and commerce should be restored between them." Therefore, and for a full manifestation of our most earnest wish and desire, and that of our Parliament, to put an end to the calamities of war, it is enacted that it should and might be lawful for us to treat, consult of, agree, and conclude, with any commissioner or commissioners named or to be named by the said colonies or plantations, or with any body or bodies, corporate or politic, or any assembly or assemblies, or description of men, or any person or persons whatsoever, a peace or truce with the said colonies or plantations, or any of them, or any part or parts thereof, any law, act or acts of Parliament, matter or thing, to the contrary in any wise notwithstanding.

Now know ye that we, reposing special trust in your wisdom, loyalty, diligence, and circumspection in the management of the affairs to be hereby committed to your charge, have nominated and appointed, constituted and assigned, and by these presents do nominate and appoint, constitute and assign, you, the said Richard Oswald, to be our commissioner in that behalf, to use and exercise

all and every the powers and authorities hereby entrusted and committed to you, the said Richard Oswald, and to do, perform, and execute all other matters and things hereby enjoined and committed to your care, during our will and pleasure, and no longer, according to the tenor of these our letters patent. And it is our royal will and pleasure, and we hereby authorise, empower, and require you, the said Richard Oswald, to treat, consult, and conclude, with any *commissioner or commissioners, named or to be named by the said colonies or plantations, and any body or bodies, corporate or politic, assembly or assemblies, or descriptions of men, or person or persons whatsoever, a peace or truce with the said colonies or plantations, or any of them, or any part or parts thereof;*<sup>a</sup> any law, act, or acts of Parliament, matter or thing, to the contrary notwithstanding.

And it is our further will and pleasure that every regulation, provision, matter or thing, which shall have been agreed upon between you, the said Richard Oswald, and such *commissioner or commissioners, body or bodies, corporate or politic, assembly or assemblies, descriptions of men, person or persons as aforesaid,* with whom you shall have judged meet and sufficient to enter into such agreement, shall be fully and distinctly set forth in writing, and authenticated by your hand and seal on one side, *and by such seal or other signatures on the other as the occasion may require, and as may be suitable to the character and authority of the commissioner or commissioners, &c., as aforesaid so agreeing,* and such instruments so authenticated shall be by you transmitted to us through one of our principal secretaries of State.

And it is our further will and pleasure that you, the said Richard Oswald, shall promise and engage for us, and in our royal name and word, that every regulation, provision, matter or thing, which may be agreed to and concluded by you, our said commissioner, shall be ratified and confirmed by us in the fullest manner and extent, and that we will not suffer them to be violated or counteracted, either in whole or in part, by any person whatsoever. And we hereby require and command all our officers, civil and military, and all others our loving subjects whatever, to be aiding and assisting unto you, the said Richard Oswald, in the execution of this our commission, and of the powers and authorities herein contained; provided always, and we hereby declare and ordain that the several offices, powers, and authorities hereby granted shall cease, determine, and become utterly null and void on the first day of July, which shall be in the year of our Lord one thousand seven hundred and eighty-three, although we shall not otherwise in the meantime have revoked and determined the same, in witness, &c. And for so doing this shall be your warrant.

Given at our Court of St. James the twenty-fifth day of July, one thousand seven hundred and eighty-two, in the twenty-second year of our reign.<sup>b</sup>

THOMAS TOWNSEND.

By his majesty's command.

To our ATTORNEY OR SOLICITOR-GENERAL.

<sup>a</sup> The parts of this commission which were objected to by the American commissioners are printed in italics.

<sup>b</sup> This commission was signed by the King on the 7th of August.

No. 52.—1782, July 26: *Extract from letter, Mr. Townshend to Mr. Oswald.*

26TH JULY 1782

SIR: I expected to have had the honor to transmit you herewith the King's commission, authorizing you to treat, and conclude a peace with the American Commissioners at Paris, as well as his Majesty's instructions, consequent to it; but from the length of time necessary to pass the commission, I have thought it necessary to forward this to you without waiting for it. . . .

I think it necessary to acquaint you, that Mr. Fitzherbert, now at Brussels, has orders to join you at Paris and to replace Mr. Grenville. I have great pleasure in recommending him to your confidence, as he is a person of whose talents and discretion I have the highest opinion founded in a long acquaintance.

Of those with whom you are to treat I have no knowledge of any, except Dr. Franklin. My knowledge of him is of a long standing, though of no great degree of intimacy. I am not  
53 vain enough to suppose, that any public conduct or principles of mine should have attracted much of his notice; but I believe he knows enough of them to be persuaded that no one has been more averse to the carrying on this unhappy contest, or a more sincere friend to peace and reconciliation, than myself. If he does me the justice to believe these sentiments to be sincere, he will be convinced, that I shall show myself in the transaction of this business an unequivocal and zealous friend to pacification upon the fairest and most liberal terms. . . .

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No. 53.—1782, July 27: *Extract from letter, Lord Shelburne to Mr. Oswald.*

SHELburne Ho 27th July 1782.

To Mr. OSWALD

DEAR SIR. I am to acknowledge the receipt of your several letters of the 8th, 10th, 11th, and 12th instant by Potter. They give me the greatest satisfaction, as they contain in my apprehension unequivocal proofs of Dr. Franklin's sincerity and confidence in those with whom he treats. I am sure it will be the study of His Majesty's Ministers to return it by every possible cordiality.

I cannot say that the subject of your letter of the 12th and of Dr. Franklin's to you of the same date gives me so much uneasiness as it seems to do you. I know the correctness of my own conduct, and that it can stand every test. A French Minister might not so easily be brought to understand the conduct of others.

But those with whom you have particularly to treat know too much of the parties incident to our constitution, and of the violence and inveteracy occasioned by personal disappointment, to be easily misled by false assertions or newspaper comments. I need only appeal to your own knowledge. However, as you may not wish it to rest entirely upon that, I have obtained His Majesty's leave to send you my despatch to Sir Guy Carleton and Vice-Admiral Digby, dated so long ago as the 5th June, and Mr. Fox's letter to Mr. Simolin of the 28th

June, and you are at liberty to communicate to Dr. Franklin such parts of both as may be sufficient to satisfy his mind that there never have been two opinions since you were sent to Paris, upon the most unequivocal acknowledgment of American independency to the full extent of the resolutions of the province of Maryland, inclosed to you by Dr. Franklin. But, to put this matter out of all possibility of doubt, a commission will be immediately forwarded to you containing full power to treat and to conclude, with instructions from the Minister who has succeeded to the department which I lately held, to make the independency of the colonies the basis and preliminary of the treaty now depending and so far advanced that, hoping, as I do with you, that the articles called advisable will be dropped, and those called necessary alone retained as the ground of discussion, it may be speedily concluded.

I have only to add on this subject that these powers have been prepared since the 21st June, were begun upon within twenty-four hours of the passing of the Act, and completely finished in four days following, and have been since delayed owing to its being asserted that your continuance at Paris prejudiced everything that was depending which required that they should be entrusted exclusively to Mr. Grenville. You know best the truth of this assertion.

You very well know I have never made a secret of the deep concern I feel in the separation of countries united by blood, by principles, habits, and every tie short of territorial proximity. But you very well know that I have long since given it up *decidedly*, though *reluctantly*; and the same motives which made me perhaps the last to give up all hope of reunion, makes me most anxious, if it is given up, that it shall be done *decidedly*, so as to avoid all future risk of enmity, and lay the foundation of a new connection better adapted to the present temper and interests of both countries. In this view, I go further with Dr. Franklin perhaps than he is aware of, and farther perhaps than the professed advocates of independence are prepared to admit. . . .

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No. 54.—1782, July 31: *Mr. Oswald's Instructions.*

(L. S.)            George R.

Orders and instructions to be observed by our trusty and well beloved Richard Oswald, of the City of London Esquire, whom by virtue of an Act passed in the present sessions of Parliament, entitled an Act to enable His Majesty to conclude a peace or a truce with certain colonies in North America therein mentioned, we have appointed our commissioner for treating and concluding a peace with any commissioner or commissioner named or to be named by the said colonies or plantations, or any part or parts of them.

Given at our Court at St. James's this 31st day of July 1782, and in the twenty second year of our reign.

Whereas report has been made to us by one of our Principal Secretaries of State of information which he had received from B. Franklin Esqr., of Philadelphia, now residing at or near to Paris to this effect—"that he, the said B. Franklin was commissioned with

54 others (whom he named to be Messrs. Adams, Laurens, and Jay,) to treat of and conclude a peace; that full powers were given to them for that purpose, and that the Congress promised in good faith to ratify, confirm and cause to be faithfully observed the treaty they should make. But that they could not treat separately from France."

And whereas having received assurances of His Most Christian Majesty's sincere disposition towards peace, and Paris having been mutually fixed upon as the most convenient place, at which all parties might assemble for the purpose of entering upon negotiation, we have already sent our trusty and well beloved Thomas Grenville Esq. to that capital with full powers to commence a negotiation with the Court of France and the other belligerent Powers in Europe; Now in consequence of the overtures above mentioned on the part of persons thus stating themselves to be deputed by the assembly of delegates of the revolted colonies, and out of our earnest desire to put an end to the calamities of a war, which has so long subsisted; and because it has also been reported to us by one of our Principal Secretaries of State, that the said Benjamin Franklin Esqr. had expressed a strong desire "of keeping the treaties of peace distinct between the several parties, though going on at the same time;" We have taken these premises into our consideration, and have thought fit by our commission under our Great Seal of Great Britain to constitute you, the said Richard Oswald our commissioner for concluding a peace, and have caused you to be furnished with such papers and information as may enable you to interchange overtures of peace, giving you at the same time the following instructions for your conduct in the execution of the important trust we have reposed in you.

1st. On the receipt of these our instructions together with our commission you will forthwith enter upon a conference with the American commissioners or as many of them as may be assembled, and you will inform them of our purpose in granting you our commission with full powers, a copy whereof you will deliver to them, at the same time declaring that you shall be ready to produce the original when desired. You will moreover deliver to them a copy of the Act of Parliament, upon which the powers granted you by our commission are founded.

2. You will then express our wishes, that the mutual powers of treating and concluding may be so general and definitive, that matters may thereby be brought to a speedy and determinate issue. With this view you will desire to be informed of, and to see the nature and extent of the authority, with which the commissioners are invested by the Congress; And we hereby authorize you to admit any persons, with whom you treat, to describe themselves by any title or appellation whatever, and to represent their superiors, from whom they state themselves to derive authority, under any denomination whatever.

3. These preliminaries being settled, you will declare, that you are ready and desirous to learn any ideas and intentions they (the American commissioners) may have for carrying into effect with most speed and certainty our earnest wishes to restore peace and amity between our kingdoms and the said American colonies.

4. In case you find the American commissioners are not at liberty to treat on any terms short of independence, you are to declare to

them that you have our authority to make that concession, our earnest wish for peace disposing us to purchase it at the price of acceding to the complete independence of the thirteen States, namely, New Hampshire &c.

5. You are moreover empowered to engage our promise in order to make the peace, if it should take place, more solid and durable, to cede to the said colonies the town and district of New York, and any other territory, town or garrison within the limits of the said colonies, which may be in our possession at the time of signing the treaty.

6. The question of independence thus removed, you will not fail of course to turn your attention to the consideration of such proposals, as it is to be hoped, they will think it incumbent upon them to make for the purpose of rendering whatever terms may be agreed upon, permanent and mutually satisfactory and beneficial; In the course of this discussion you will not fail to pay due attention to the rights and interests of individuals, and you will particularly press the speedy enlargement of such persons as may be now imprisoned or confined on account of their attachment to the Government of Great Britain. Under this head you are to consider and claim, as a matter of absolute justice all debts incurred to the subjects of Great Britain before 1775, and if, as has been intimated you should find the commissioners unauthorised to engage for a specifick redress in this particular, you will insist on the justice of these demands, and that they would promise and engage for the sincere interposition of Congress with the several provinces to procure an ample and full satisfaction.

7. Whereas many of our loyal subjects having valuable property in the colonies in question have nevertheless in these unhappy disputes taken part with Great Britain, and in consequence thereof have been considered as having thereby exposed their property to confiscation, justice as well as compassion demands, that a restitution or indemnification should be required on behalf of such sufferers. On this head you will propose a restoration of all rights as they stood before the commencement of hostilities, and a general amnesty of all offences committed or supposed to be committed in the course of them.

8. If you should collect from the answer made to these representations, that their consent to the preceding article cannot be obtained without some further concession on our part, and the cession before proposed of New York &c. be not sufficient, you may in that case propose to stipulate for the annexation of a portion of our ungranted lands to each province in lieu of what shall be restored to the refugees and loyalists whose estates they have seized and confiscated.

9. In regard to the question of any national substitution for the dependent connection with Great Britain, you must in the first place seek to discover the dispositions and intentions of the colonies by the intimations and propositions of the commissioners; and if it shall

55 appear to you to be impossible to form with them any political league of union or amity to the exclusion of other European Powers, you will be particularly earnest in your attention and arguments to prevent their binding themselves under any engagement inconsistent with the plan of *absolute and universal independ-*

ence, which is the indispensable condition of our acknowledging their independence on our Crown and kingdoms.

10. It were much to be wished, that a foundation for an amicable connection could be laid in some mutual principle of benefit and indulgence. In this view we would direct you to propose as a friendly token of reconciliation and of propensity to those ties which are consonant to our mutual relation, habits, language, and nature, that in future an unreserved system of naturalisation should be agreed upon between our kingdoms and the American colonies.

11. But notwithstanding you are by our commission authorised to conclude and sign anything that may be agreed upon between you and the American commissioners, it is our express will and pleasure that you do not, in virtue of the said power, proceed to the signature of any Act whatever with the commissioners for the colonies, without first having received our special orders for that purpose from one of our Principal Secretaries of State.

12. Whereas we have, at the earnest desire and suggestion of the said commissioners as above stated actually commenced a negotiation with the Court of France, which has been extended to other belligerent Powers, and entrusted as above our trusty and well-beloved Alleyne Fitzherbert, Esq., with the necessary powers for that purpose. Our will and pleasure is that you preserve the most constant and intimate communication from time to time with the said Alleyne Fitzherbert, and in case you shall learn from such communication that the proposals of the Court of France or of the other belligerent Powers, without whose concurrence the Court of Versailles will not conclude a treaty, should be such as we cannot consistently with a due regard to our own honour and the interests of our kingdom accept, and the design of a general treaty should be thereby frustrated; you will in that event point your whole attention to dispose the American commissioners towards a separate negotiation, in the hope, that the concessions you are authorised to make, will appear to them to satisfy the interests and the claims of their constituents, as in that case they can have no justifiable motive to persist in a war, which as to them will have no longer any object, and, it is to be hoped, will not be inclined to lend themselves to the purposes of French ambition. At any rate, you will not fail to inform yourself accurately what will content them, and report to us accordingly through one of our Principal Secretaries of State, waiting for, and expecting further instructions, which shall be sent you with all suitable expedition.

G. R.

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No. 55.—1782, August 7-9: *Mr. Oswald's Minutes of Conversation with the American Commissioners.*

... I accordingly returned to Paris, & called upon Mr. Jay.<sup>a</sup> He is a man of good sense; of frank, easy & polite manners. He read over the copy of the Commission, and Mr. Townshend's letter accounting for its not being under seal; and then said, By the quota-

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<sup>a</sup> Mr. Jay reached Paris on 23 June, but from ill health was unable to conduct negotiations until August.



tion from the Act of Parliament in the Commission he supposed it was meant, that independence was to be treated upon, and was to be granted perhaps as the price of peace. That it ought to be no part of a treaty. It ought to have been expressly granted by Act of Parliament; and an order for all troops to be withdrawn; previous to any proposal for treaty. As that was not done, the King, he said, ought to do it now by proclamation, and order all garrisons to be evacuated; and then close the American war by a treaty. He said many things of a retrospective kind, such as the happy effects a declaration of that nature at earlier periods would have produced; if Great Britain had handsomely, & nobly made this grant before such deep wounds had been given to that bias and attachment, which till then subsisted all over that country in favour of Great Britain even in spite of their petitions being repeatedly rejected. That in such case they would undoubtedly have concerted such plan of treaty, as would have not only restored peace; but would have laid a solid bottom of amity and conciliation, and such as would have obliterated from their memory in a short time all remembrance of preceding acts of distress and violence.

But by the continued enforcement of the same cruel measures the minds of the people in general all over that continent were almost totally alienated from Great Britain so that they detested the very name of an Englishman.

That it was true a number of the older people had not forgot their former connections; & their inclinations might still lean towards England. But when they were gone, & the younger generation came to take their place, who had never felt any of those impressions, those inclinations would be succeeded by a grudge and resentment of every kind, upon reflecting on what they had seen & their parents had suffered; that few of them but could recollect the loss of blood of some relation or other, devastation of their estates, & other misfortunes.

On which occasion he ran into a detail of particulars, as unnecessary as unpleasant here to be repeated, and which I would not have touched upon, if I did not think that a free exposure of the features of this conversation may help to form a judgment of what may be expected in the issue, from the determination of this commissioner, and consequently what concessions on this very critical occasion it may be safe and proper to propose or insist upon.

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But the great point was to make such a peace as should be lasting.

56 This brought back my attention to the same expression in

Monsr. de Vergennes's discourse in April, when I first had the honour of waiting on him, and the more so, that almost in every conversation I have had with Dr. Franklin, he has made use of the same words, & delivered as in the way aphorism, and as an indispensable principle in the foundation of a final settlement with them and France.

I never at these times chose to ask for an explanation, having no right to do so; I thought it was then too early to venture on such delicate ground; and so I remained at a loss as to the intended meaning of the words, although I strongly suspected the expression pointed at some unpleasant or unfavourable limitations on the conduct of Great Britain.

But now being in a somewhat different situation, and having so fair an opportunity, which I wished not to miss of, in order to guess at the meaning of this phrase, I replied that such long intermission of war was certainly very desirable. But what security could there be given for a continuance of peace, but such as generally put an end to all wars, being that of treaty? But which was often found to be a very inadequate security; as was the case of the last treaty concluded at this place, only about 20 years ago.

To this Mr. Jay replied, he would not give a farthing for any parchment security whatever. They had never signified anything since the world began; when any Prince or State, of either side, found it convenient to break through them. But the peace he meant was such, or so to be settled, that it should not be the *interest* of either party to violate it. This, he said, was the only security that could be proposed to prevent those frequent returns of war, by which the world was kept in perpetual disturbance.

I could guess what he meant by the present parties being bound by motives of interest to be quiet; and asked for no explanation.

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I thought it remarkable that so soon after I left Dr. Franklin, I should have found this gentleman's plan of settlement with Great Britain, so much less liberal, or at least so much more encumbered with relative connections, concerns, and interests than had been insinuated in any conversation I had ever had with Dr. Franklin, or rather, on the contrary, seemingly very materially different: excepting only in that of making such a peace as should be lasting, which the doctor always said he aimed at.

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When we set out upon this business of peace, we justly thought that a relinquishment of the sovereignty of America, which France so strongly pleaded for, would have had some weight in the scheme of pacification with them: and that such grant of independence would have also fully satisfied the Colonies; and then, that by a few exchanges or concessions of little consequence, in the course of the negotiation with France, the whole might have been quickly ended. But the affair seems to have taken a different turn. France very wisely, I don't say consistently, disowns the Grant of Independence as being no concern of hers, and Mr. Jay will not allow them to share in the merit of it lest, the Colonies should be brought under a greater obligation to France, than they would choose; or more than they can easily discharge, by a repayment of the money they borrowed of them, which his colleague some time ago told me could be easily done, as their taxes were coming in fast.

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I never chose to tease Dr. Franklin with many questions, yet at different times he has freely declared, that having got the grant of independence, their treaty with France was at an end: and on the 10th July explicitly specified the conditions which he thought must necessarily be granted, to obtain a peace of any kind with the Colonies; but if granted, would have that effect: adding at the same time others, as discretionary or advisable; which if complied with, would not fail to diffuse a temper of reconciliation all over the country.

These were the doctor's sentiments and conditions of settlement on the said 10th July; and which he read to me from a minute in writing, and only declined putting it into my hands from a motive of delicacy regarding his colleague then just arrived. And so consistent the doctor still appears to be, that upon the production of my Commission on the 7th instant, he repeated the words which he had used on a former occasion, "that he hoped we should do well enough, and not be long about it," as already mentioned. That could not but be very agreeable to me; if my expectations had not been so soon after damped by the said unpleasant reception from Mr. Jay.

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Dr. Franklin, as I have said, had often touched upon this subject in a general way: "that peace could not be too dearly bought"; and always ending with a wish that it could be made lasting, and at the same time observing that England, in a state of peace for a hundred years, would become a perfect garden. I did not clearly perceive the meaning of proposal; yet I own I did not much like any of these prescriptions of quietism, as believing they would not be entirely suitable to the English taste or interest; nor did I foresee any benefit intended for England, by what M. de Vergennes, in Dr. Franklin's hearing, humanely proposed in April, of settling the peace *solide-ment*, and for a long standing; which I then suspected as an intimation of an intended scheme of some sort for putting the naval power of England under some unusual and particular limitation.

On these occasions with Dr. Franklin, I never chose to say much, or ask for an explanation as to his idea of the effectual means of preventing the return of war.

But upon Mr. Jay's mentioning the same proposal the other day of their design of settling the depending treaty on such a solid foundation, as that the peace should be lasting, I asked him how a sufficient security could be found to make it so. He answered as before mentioned; The best security in the world, viz., that it shall not be the *interest* of either party to break it.

57 There was no explanation necessary here, as I knew he could not mean treaty, since he had just before declared, that he made no account of any treaty whatever, when any Prince or State found it convenient to break it, and therefore I concluded he must mean a *guarantee* of some intermediate Power who he thought would not chose to be principals in any war, and yet (in that state of neutrality respecting their own concerns) might be capable of controlling other States, by adopting the cause of those in whose safety they might be particularly interested, or to whom protection was due, under the stipulations of a general guarantee.

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As yet, their intention has come out only in the unexplained manner which I have mentioned; but as something (as has been said) was hinted by M. de Vergennes so early as in April, and has been from time to time since then repeated by Dr. Franklin in the same way, and at last in a manner openly declared by Mr. Jay upon the first perusal of my Commission, I think it my duty to lay the same (as far as I can yet judge of it) before His Majesty's Ministers, so as

such resolutions may be taken, and the necessary instructions given in consequence thereof, as to their wisdom may seem fit.

Paris, 9th Aug<sup>st</sup>, 1782

RICHARD OSWALD

To the Right Hon<sup>ble</sup> THOMAS TOWNSHEND,  
*One of His Majestys Principal Secretaries of State.*

No. 56.—1782, August 13: *Letter, Mr. Adams to Mr. Jay.*

THE HAGUE, August 13, 1782.

DEAR SIR: The public papers announce Fitzherbert's commission to be to treat with "the four powers at war with Great Britain." But whether they mean Hyder Ali or the Mahrattas is uncertain. I have obtained intelligence of a paper addressed lately from the court of St. James to the courts of Vienna and Petersburg, as well as that of Paris, in which are the following words, namely: "Sa majesté britannique dit qu'il ne préjuge, ni ne veut préjuger aucune question quelconque, et qu'il ne prétend exclure personne de la négociation qu'on a en vue, qui pourrait s'y croire intéressé, soit qu'il soit question des états généraux, soit qu'on y veuille faire entrer les colonies américaines." You, perhaps, may have seen the whole; if you have I beg a copy.

For my own part, I am not the minister of any "fourth state" at war with Great Britain, nor of any "American Colonies," and, therefore, I should think it out of character for us to have anything to say with Fitzherbert or in the congress at Vienna until more decently and consistently called to it. It is my duty to be explicit with you and to tell you sincerely my sentiments. I think we ought not to treat at all until we see a minister authorized to treat with "the United States of America," or with their ministers. Our country will feel the miserable consequence of a different conduct if we are betrayed into negotiations, in or out of a congress, before this point is settled; if gold and diamonds and every insidious intrigue and wicked falsehood can induce anybody to embarrass us and betray us into truces and bad conditions, we may depend upon having them played off against us. We are, and can be, no match for them at this game. We shall have nothing to negotiate with but integrity, perspicuity, and firmness. There is but one way to negotiate with Englishmen, that is clearly and decidedly; their fears only govern them. If we entertain an idea of their generosity or benevolence towards us, we are undone. They hate us universally, from the throne to the footstool, and would annihilate us, if in their power, before they would treat with us in any way. We must let them know that we are not to be moved from our purpose, or all is undone. The pride and vanity of that nation is a disease, it is a delirium; it has been flattered and inflamed so long by themselves and by others that it perverts everything. The moment you depart one iota from your character and the distinct line of sovereignty, they interpret it to spring from fear or love of them, and from a desire to go back. Fox saw we were aware of this and calculated his system accordingly. We must finally come to that idea and so must Great Britain. The latter will soon come to it if we do not flinch. If we discover the least weakness or wavering the blood and

treasures of our countrymen will suffer for it in a great degree. Firmness! firmness and patience for a few months will carry us triumphantly to that point where it is the interest of our allies, of neutral nations, nay, even of our enemies, that we should arrive. I mean a sovereignty universally acknowledged by all the world. Whereas the least oscillation will, in my opinion, leave us to dispute with the world and with one another these fifty years.

With great respect, &c.,

JOHN ADAMS

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No. 57.—1782, August 11 and 13: Extract from Mr. Oswald's *Minutes of a Conversation with Dr. Franklin.*

PARIS Sunday 11th & 13th August 1782.

I went out this forenoon to Dr. Franklin, to know whether he was inclined to enter upon business. He told me he had carried  
 58 the copy of the commission I gave him, to Versailles, the day before, and had some conversation on the subject with M. de Vergennes; who was of opinion with him, that it would be better to wait until a real commission arrived; this being neither signed nor sealed, and could be supposed as only a draft or order, in which there might be alterations; as in the preamble it said only "to the effect following," &c. To this objection I had nothing to say, as I did not incline to show them the instructions though signed and sealed.

Finding no alteration in the doctor's manner, from the usual good-natured and friendly way in which he had formerly behaved to me (as I had reason to apprehend from what had lately passed with his colleague), and having a quiet and convenient opportunity, I was anxious to learn whether the doctor entertained those ideas, which, in the preceding papers, I suspected Mr. Jay had in view, regarding the *means* of preventing future wars, by settling the peace in such manner as it should not be the interest of the parties to break it.

With that intent, I told the doctor I had had a long conversation with Mr. Jay, of which no doubt he had been informed; and in which he had not spared us in his reflections on what had passed in the American war; and that I could not but be sorry he had such just reason for the severity of some of them. At same time I was pleased to find he was equally well disposed to peace, and to bring it quickly to a conclusion as we were; and also that it should be a lasting one, as he, the doctor, had always proposed. And that I was only at a loss as to how that could be ascertained other ways than by treaty; which Mr. Jay declared he paid no regard to; and said it could be only depended upon as lasting by its being settled so as it should not be the interest of any of the parties to break it. I told the doctor this was certainly the best security, if one could tell how to accommodate the terms so justly to the mutual interest of the parties, as to obviate every temptation to encroachment or trespass.

The doctor replied, the method was very plain and easy, which was to settle the terms in the first projection on an equal, just, and reasonable footing; and so as neither party should have cause to complain; being the plan which M. de Vergennes had in view, and had always recommended in his conversations with him on the subject of peace.

And the doctor said it was a good plan, and the only one that could make the peace lasting. And which also put him in mind of a story in the Roman history, in the early time of the Republic. When, being at war with the State of Tarentum, and the Tarentines having the worst of it, they sent to the Senate to ask for peace; the Ambassador being called in, the Senate told him they agreed to give them peace, and then asked him how long he thought it would last. To which he answered, That would be according to the conditions. If they were reasonable the peace would be lasting. If not it would be short. The Senate seemed to resent this freedom of expression. But a member got up and applauded it, as fair and manly, and as justly challenging a due regard to moderation on their part.

It is not easy for me to say how happy I felt myself at the conclusion of this quotation. The terms and conditions, it is true, remained undecided, and comprehend, no doubt, a very serious question, although not material to what I aimed at. Nor did I conceive them to lie so much in my way as in that of another department, by the concern which the French Minister took in settling the principle. Nor did I trouble myself about the possible inefficacy of it, as still depending in some degree on the obligations of treaty, however cautiously adjusted, and therefore I did not think it proper to touch upon that point, nor to say anything on the subject of terms or conditions.

I thought myself sufficiently satisfied in getting clear of my apprehensions of those ill-founded suspicions of a supposed American *guarantee* being intended, as mentioned in the papers of the 9th instant, and at the same time asking pardon of those to whom that design was unjustly imputed, and which upon my return from this visit, I should have certainly struck out of those papers, if I did not, with all submission, incline to think that, by remaining under the eye of Government, they may help to show that the question of the possibility of such guarantee taking place on some future occasion, may still not be undeserving of attention. As to the consequences of such measure, whenever it happens (as pointed out in the said paper of the 9th), there can be no doubt. Nor do I think it requires much ingenuity in the Americans quickly to discover the expediency and benefit of resorting to it on a variety of occasions, particularly in case of our insisting on terms in the present treaty, or acting a part in our future correspondence with them, which we cannot support in such manner as to make it appear to them to be their interest, (and consistent with their engagements and the character they have adopted) quietly and contentedly to submit to.

I am the more ready to hazard the freedom of these observations, and the danger of exciting into action, the least experiment of this kind of combined interposition of the American provinces, upon reflecting on Dr. Franklin's hint or caution, as reported in one of my letters of last month, "not to force them into the hands of other people."

Which I hope will never happen; but, on the contrary, after laying the foundation of peace in the best manner that can be done, on the bottom of which the Congress wish it to stand, by an amicable and final agreement with their commissioners here, every possible measure may thereafter be taken to promote a temper of reconciliation and amity over the whole of that country. As yet there has been nothing done in a separate way, however unjustly suspected, to

interfere with the plan of such preliminary and regular settlement. And I hope the same will be followed out in such manner as to show to the Americans, that all such concessions as are required and can be reasonably granted, do actually flow from a desire of His Majesty and His Ministers of laying this foundation on the most just and equitable principles, and in a mutual relation to the benefit of one party as well as the other.

After that is done, and consequently every pretence and occasion of jealousy is obviated, and constitutionally out of the question, I must take the liberty to say, that it will concern the interest of

59 Great Britain in the most sensible degree, as well in the hopes of returning benefit, as in that of avoiding contingencies of critical danger, to concert, from this time every possible method of facilitating and perpetuating a friendly correspondence with those countries.

The second thing the doctor touched upon was independence. He said by the quotations of Acts of Parliament, he saw it was included in the commission, but that Mr. Grenville had orders to grant it in the first instance. I replied, it was true, and that though supposed to be granted under this commission, and in the course of the treaty, I hoped it would make no difference with gentlemen who were so well disposed to put an end to this unhappy business, as I knew him to be. He then asked if I had instructions. I said I had, and that they were under His Majesty's hand and seal; and that by them it appeared that independence, unconditional in every sense, would be granted; and that I saw no reason why it should not make the first article of the settlement or treaty; that I was sorry that Mr. Jay should have hesitated so much on that head, as it ought to have been done separately and by Act of Parliament, and now, Parliament being up, that the grant should be made by proclamation; that I did not pretend to judge whether the right and authority of a grant of that kind so conveyed, would be proper and effectual. There seemed, however, to be one inconveniency in it. That a proclamation became an address to the Congress and to every part of their provinces jointly and separately, and might in so far interfere with the progress of the present commission, under which we hoped that all pretensions would be properly and expeditiously settled. That in this matter he was a better judge than I could pretend to be. I was only sure of one thing—that the affair might be as effectually done as in the way proposed by Mr. Jay. The doctor replied, that Mr. Jay was a lawyer, and might think of things that did not occur to those who were not lawyers, and at last spoke as if he did not see much or any difference, but still in such mode of expression as I could not positively say would preclude him from insisting on Mr. Jay's proposition, or some previous and separate acknowledgment. I was glad to get clear of the subject without pushing for further explanation or discussion, or yielding farther, as I have mentioned, than to a preliminary acknowledgment in the course of the treaty.

I then said, after that was done I hoped there would not be many things to settle, and that the articles called necessary, which he specified on the 10th July, would pretty nearly end the business. And that those called advisable, which, as a friend to Britain and to reconciliation, he had then recommended, would be dropped or modified in a proper manner; that I had fairly stated the case at home;

and could not but confess that I had this answer from one of his friends. To this I cannot say I had any reply.

The doctor at last touched upon Canada, as he generally does upon the like occasions; and said there could be no dependence on peace and good-neighbourhood while that country continued under a different Government, as it touched their States in so great a stretch of frontier. I told him I was sensible of that inconveniency; but, having no orders, the consideration of that matter might possibly be taken up at some future time.

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No. 58.—1782, August 15 and 17: Extract from Mr. Oswald's "Observations."

... He (Jay) said we had it now in our power to put a final period to the misfortunes we complained of by carrying into execution what had been solemnly intimated to them, and which Sir Guy Carleton had orders to communicate to the Congress in America, a copy of whose instructions they were in possession of, one article of which says that His Majesty was to grant unconditional independence to the thirteen States of North America; but that the way proposed of making the same rest upon the events and termination of a treaty did not come up to that description; and was a mode of performance which would not give satisfaction to the Congress or people of America, and could not be considered by them as absolute and unconditional, if only standing as an article of a depending treaty. And upon the whole that they could not treat at all until their independence was so acknowledged as that they should be on an equal footing with us, and might take rank as parties to an agreement.

That in this they had a fair precedent in the settlement of the Dutch with the Spaniards, who refused to enter into any treaty until they were declared Free States. That if we wished for peace, that was the only way to obtain it. . . .

At proper times I said what occurred to me as necessary to bring this question to some sort of desirable period, and in particular wished to have Mr. Jay's idea of such way of declaring this unconnected ascertainment of independence as would satisfy them.

His former proposal of doing it by proclamation he gave up, as liable to sundry objections needless to be here repeated; he then proposed it should be done by a particular and separate deed, or patent under the Great Seal, in which my commission for a treaty might also be narrated: and that such patent should be put into the possession of the commissioners, to be by them sent over to the Congress; and accordingly Mr. Jay brought me a draft of the patent. As I could see no other way of satisfying those gentlemen, and it appearing highly necessary that some beginning should be made with them, since until that was done the foreign treaty could not proceed in its

course, I agreed to send the draft over to His Majesty's Secretary of State by a courier express for that purpose, with my



own opinion rather in favour of the proposal than otherwise. And so it was settled with the commissioners.

However, afterwards, on casting my eye upon the preamble of the draft, where it is stated *as if Sir Guy Carleton had orders to propose treaties of peace, &c., to the Congress*, and believing this to be a mistaken quotation of memory, from the copy of Sir Guy's instructions in the possession of the commissioners, and as such inferring an unjust imputation on the consistency of the conduct of administration, and apprehending also that the commissioners entertaining a doubt of this nature might have been the reason why they wished to be guarded with all this caution in requiring this special acknowledgement under the Great Seal, besides keeping their minds in suspense in all future proceedings where confidence in good faith ought to smooth the path on many occasions to a happy termination.

I say, in reflecting on these things I thought it my duty, and I confess I was on my own particular account a little anxious to have an explanation of this matter. And therefore, after it had been agreed in the presence of Dr. Franklin and Mr. Jay that I should send off the draft, I took the liberty to point out to them the said preamble, telling them that there might be a possibility of mistake or misquotation in the last part of the paragraph. Mr. Jay said he had not the copy of Sir Guy's instructions, and acknowledged he had inserted those words from a general impression that remained on his memory, and could not positively say that there might be some mistake. Dr. Franklin said he had the copy of the instructions, and would send a duplicate to Mr. Jay in a few hours. He did so, and I waited on Mr. Jay to see the papers. Upon the perusal, he owned he had been mistaken, and that Sir Guy's instructions went no further than an order of communication to inform the Congress and General Washington that His Majesty intended (or had given directions) to grant free and unconditional independence to the thirteen States, &c.

Finding this prejudice entirely removed, and that Mr. Jay was perfectly satisfied that the whole course of proceeding in this matter was fair and consistent, I asked him what occasion there was then for this extraordinary caution of insisting on the solemnity of such separate deed under the Great Seal, &c., since a preliminary clause or article in the treaty, as always intended, might do the whole business by making it absolute, and not depending in the view of ascertainment, on the event of other or subsequent articles: and which might be so expressed as to remove every doubt as to the independence being as free and unconditional as they desired it to be. In confirmation of the greater expediency and dispatch of this method, and that it was the sincere intention of His Majesty to make this grant in the precise way they desired, I thought myself warranted in telling him, that I had a full power in my instructions to give them entire satisfaction on this head; and made no scruple in shewing it him, as it stood in the 4th article thereof. Upon the perusal, Mr. Jay said that was enough and he was fully satisfied; and there was no occasion for any other writing on the subject, that resting upon this would save time, and he was happy also that the discovery of this mistake prevented their asking of His Majesty any farther proof of his good intentions towards them than what were actually meant and conveyed in these my instructions. Upon this I promised imme-

diately to send off this representation and also to desire leave and permission to make an absolute acknowledgment of the independence of the States to stand invariably as the first Article of the proposed treaty with those gentlemen.

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A great deal more I said, but being of a speculative kind, regarding future times, and the different situation we should be in from what we had formerly been, and the need we should feel for a friendly attention on the part of the Colonies, with other things of so general a nature not necessary to be repeated here.

In answer, Mr. Jay replied to the following purpose: That we had only to cut this knot of independence to get rid of many of those apprehensions, that if we looked better to our conduct for the future we might be sure of recovering and preserving a solid and beneficial friendship with the Americans; that for the last twenty years he could not say much for us, yet he said more, particularly regarding the fairness and sincerity of our profession, than I choose to repeat.

He continued by saying that England, under a wise administration, was capable of great things. Such a country, such a people, and blessed with such a constitution had nothing to fear: and in thirty years would forget all her present difficulties &c., &c. . . .

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No. 59.—1782, August 17: *Letter, Mr. Oswald to Mr. Townshend.*

PARIS 17th August 1782.

SIR: Referring to my letters of the 5th and 6th by the courier Lauzun, I am now to acknowledge the honour of your letter of the 10th by Gurnell, together with my commission under the Great Seal, which I have shown to the American commissioners, and they are entirely satisfied therewith.

Under this cover there are three packets of papers which contain an account of my proceedings under this commission from the 9th instant to this day; being the substance of sundry conversations I had with the above-mentioned commissioners in that time, together with my observations thereon, and other occurrences relative to this business.

They are put down in the way of detached Minutes, in which shape I hope they will be equally convenient in the perusal, as if they  
 61 ran in a continued course of epistolary narrative. If so, I shall be well pleased, as the method is much easier for me, where there is such a mixture of things, and some of them too frivolous to be conveyed in any other dress. Besides, it occurred to me that in this form, where I give the facts, I have them only to answer for, whereas I might make mistakes in the inferences and conclusions. If I am wrong be pleased, Sir, to inform me, and I shall alter the method.

By the packet of this date, you'll please to observe that the American business is now brought to that point, that independence must be absolutely and unconditionally granted, otherwise all farther correspondence with the commissioners must cease, as well as Mr. Fitz-

herbert's negotiation in the foreign treaties. I was so well convinced of that being the event of a delay, and the disagreeable consequences thereof, that I have promised to the commissioners that I would dispatch this courier express on that subject, with my opinion of the necessity of complying with their demand, having given them at same time such assurance as I can venture upon, that they will not meet with either delay or refusal.

By the third page of the packet of this date, you will please to observe that the Commissioners have given up their demand of a certification of the grant by a separate deed or patent, under the Great Seal, and will be satisfied with its being included in the treaty, and standing as an article thereof, only that it must, upon being inserted there, be ratified or declared as absolutely and irrevocably acknowledged, and as not depending upon the event of other or subsequent articles. It will be easily settled in that manner, to the satisfaction of those gentlemen, for which I shall only want your permission to make the declaration. If the commissioners should desire an extract of that article, I can certify it, and they will be satisfied, as Mr. Jay assured me. If it is His Majesty's pleasure that the grant should be made, the sooner I have a return to this the better, there having been of late an anxiety and appearance of diffidence in those gentlemen as to this matter which I presume to think it would be proper to put an end to, if only to have the chance of proceeding more agreeably and advantageously through the rest of the treaty.

When they called together on the 15th I expected they would have left a copy of their powers with me, as Dr. Franklin proposed some days before, but they said nothing of them, which showed that they are determined not to treat until their independence is acknowledged either separately, or in the preliminary article of the treaty. Knowing this was the case I did not ask for their papers.

I have punctually communicated to Mr. Fitzherbert every paper, or intelligence that I think will be of any use to him, and shall with great pleasure continue to do so as opportunities offer.

I have the honour to be Sir

Your most obedient humble servant

RICHARD OSWALD.

Right Honble THOMAS TOWNSEND.

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No. 60.—1782, August 18: *Extract from letter, Mr. Oswald to Lord Shelburne.*

... In these papers your Lordship will see that the American Commissioners will not move a step until the Independence is acknowledged. And all I have been able to gain upon them, is to take it into the body of a treaty, but there, as a preliminary article to be signed and sealed as a ratified deed, come of the subsequent articles what may. I hope, however, in that way we may get on, provided orders are sent me to make the acknowledgment in the final form as above mentioned. If that is granted, the sooner the order comes the better. Until the Americans are contented Mr. Fitzherbert cannot proceed. . . .

No. 61.—1782, August 18: *Extract from letter, Mr. Oswald to Mr. Townshend.*

PARIS Sunday 18th August 1782

SIR Before the courier sets out I find myself under a necessity of troubling you with this addition to my letter of yesterday's date, so as I may have your particular instructions on the subject thereof. It relates to the garrisons of New York, and other stations; if any are still remaining in our hands within the districts of the Thirteen States.

The Commissioners here insist on their independence, and consequently on a cession of the whole territory. And the misfortune is that their demand must be complied with in order to avoid the worst consequences, either respecting them in particular, or the object of general pacification with the foreign States, as to which nothing can be done until the American independence is settled.

Allow me then, Sir, to suppose that you give me permission to declare this independence, as the first article of the treaty, and to certify the same as so much absolutely finished in the process; and which thereby becomes a ratified Act, let what will happen afterwards in the subsequent demands of either side in the course of the treaty, which is, I believe, what the commissioners will insist on, or will not treat at all.

62 Our garrisons, if still remaining, are then at their mercy, unless saved here by an exception in the general cession, which won't be liked, and would be difficult to settle; or by a second article or stipulation on the part of the Commissioners solemnly ratified in the same manner as was that of the preceding one of independence.

This, I think would be the smoothest way, and which I would fain hope they would agree to. And yet I did not think it prudent to state any questions to those Commissioners on the subject, fearing I should not receive such agreeable answer as I could wish, until they are satisfied that I have authority to settle the point of independence, and are thereby in humour to take subordinate things into reasonable consideration.

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No. 62.—1782, September 1: *Extract from letter, Mr. Townshend to Mr. Oswald.*

WHITEHALL 1 Sept 1782

SIR I have received and laid before the King your letters of the 17th, 18th, and 21st instant, together with the three packets of papers containing conversations with Dr. Franklin and Mr. Jay, and your observations thereupon, enclosed in your letter of the 17th, and I am commanded to signify to you His Majesty's approbation of your conduct, in communicating to the American Commissioners the 4th article of your instructions, which could not but convince them that the negotiations for peace, and the cession of independence to the thirteen United Colonies were intended to be carried on, and concluded with the Commissioners in Europe. Those gentlemen having expressed their satisfaction concerning that article, it is hoped they

will not entertain a doubt of His Majesty's determination to exercise, in the fullest extent, the powers with which the Act of Parliament hath invested him, by granting to America full, complete, and unconditional independence, in the most explicit manner, as an article of treaty. But you are, at the same time, to represent to them, if necessary, that the King is not enabled by that Act to cede independence, unconnected with a truce, or treaty of peace, and that therefore the cession of independence cannot stand as a single separate article, to be ratified by itself; but may be, (and His Majesty is willing shall be) the first article of the treaty, unconditionally of any compensation or equivalent to be thereafter required in the said treaty. You will observe that the very article of your instructions referred to, is conformable to this idea, as it is expressly mentioned to be offered by His Majesty as the price of peace; and that independence declared and ratified absolutely and irrevocably, and not depending upon the event of concluding an entire treaty, might in the end prove a treaty for the purpose of independence alone, and not for a peace or truce, to which objects all the powers of the Act refer.

I should think it unnecessary here to advert to the treaty of 1607 between the Court of Spain and the United Provinces, were it not that you represent Mr. Jay as having quoted the conduct of the Dutch upon that occasion by way of precedent. If you look into the Corps Diplomatique, and other books upon the subject, you will see this gentleman is mistaken in his opinion.

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If the American Commissioners are, as His Majesty is, sincerely disposed to a speedy termination of the calamities of war, it is not to be conceived that they will be inclined to delay, and to embarrass the negotiations, by refusing to accept the independence, as an article of the treaty, which by that means may be secured to them fully and completely, so as to leave no possible ground of jealousy or suspicion.

But in order to give the most unequivocal proof of the King's earnest wish to remove every impediment, I am commanded to signify to you His Majesty's disposition, (upon the unanimous advice of all his Ministers) to agree to the plan of pacification proposed by Dr. Franklin himself, including, as it does, the great point in question as part of the 1st article.

The articles, as specified by Dr. Franklin to you, and recited in your letter to the Earl of Shelburne of the 10th July last, are as follows:—

1. Of the first class, *necessary* to be granted, independence, full and complete, in every sense, to the thirteen States, and all the troops to be withdrawn from thence.

2. A settlement of the boundaries of *their* colonies and the loyal colonies.

3. A confinement of the boundaries of Canada, at least to what they were before the last Act of Parliament, you think in 1774, if not to a still more contracted state, on an ancient footing.

4. A freedom of fishing on the banks of Newfoundland and elsewhere, as well for fish as whales.

These articles were stated by you, as all that Dr. Franklin thought necessary; and His Majesty trusting that they were suggested with

perfect sincerity and good faith, has authorised you to go to the full extent of them. The 3rd article, however, must be understood and expressed to be confined to the limits of Canada as before the Act of 1774. As to the 4th, of the liberty of fishing, the privilege of drying, not being included in Dr. Franklin's demand, it is taken for granted, that it is not meant to be inserted in the treaty.

His Majesty is also pleased, for the salutary purposes of precluding all further delay, and embarrassment of negotiation, to waive  
63 every stipulation by the treaty for the undoubted rights of the merchants whose debts accrued before the year 1775, and also for the claims of the refugees for compensation for their losses, as Dr. Franklin declares himself unauthorised to conclude upon that subject; yet His Majesty, it is hoped, it is well-founded in his expectation that the several Colonies will unite in an equitable determination of points, upon which the future opinion of the world, with respect to their justice and humanity, will so obviously depend. But if, after having pressed this plan of treaty to the utmost, you should find the American Commissioners determined not to proceed, unless the independence be irrevocably acknowledged without reference to the final settlement of the rest of the treaty, you are to endeavour to obtain from them a declaration, that if this point of independence were settled they would be satisfied, as far as relates to America, with such further concessions as are contained in the four articles as above stated. You are then, but in the very last resort, to inform them, in manifestation of the King's most earnest desire to remove every impediment to peace, that His Majesty is willing, without waiting for the other branches of the negotiation, to recommend to His Parliament to enable him forthwith to acknowledge the independence of the 13 United Colonies, absolutely and irrevocably; and not depending upon the event of any other part of the treaty.

But upon the whole it is His Majesty's express command that you do exert your greatest address, to the purpose of prevailing upon the American Commissioners to proceed in the treaty, and to admit the article of independence as a part, or as one only, of the other articles which you are hereby empowered to conclude.

I am &c

THOS. TOWNSHEND

RICHARD OSWALD ESQ

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No. 63.—1782, September 10: Letter, Mr. Oswald to Mr. Townshend.

PARIS 10th Sept 1782

SIR: By the Courier Ranspack, who arrived here on the 3rd, I have the honour of your letter of the 1st instant. Upon receipt of it, I went out to Dr. Franklin. He asked me whether I had any directions relative to the point upon which the last courier had been dispatched to England, regarding a previous declaration of their independence before a commencement of treaty. I told him I had got instructions on that head, which, although they empowered me only to make such declaration as in the first article of the treaty, yet I hoped, upon a due consideration of the matter, they would appear to be fully satisfying. He said, if there was no particular objection,

he could wish to have a copy of that instruction. I told him it should be sent to him. He was ill at the time; and as he could not come to town, he gave me a letter to Mr. Jay, desiring him to come out to him in the evening.

I called on that gentleman. When informing him of the manner in which I was authorised to treat, he said that they could not proceed unless their independence was previously so acknowledged as to be entirely distinct and unconnected with treaty. In the course of this conversation, and the day thereafter, a good deal was said of the same nature with what had passed on former occasions relative to this subject, as advised in my letters of last month.

Two days ago Dr. Franklin sent to me, desiring a copy of the instruction which I had promised, as above mentioned. I copied out the first part of your letter of the 1st instant, leaving out some immaterial words, and sent it enclosed in a letter from myself, of both of which papers there is a duplicate under this cover.

Since then, I have seen Mr. Jay frequently, and have used every argument in my power to get him over his objections to treating, without a separate and absolute acknowledgment of independence. And for that purpose I found it necessary (although unwillingly), yet as of my own private opinion, to tell him, that there might be a doubt whether the powers in the Act of Parliament went so far, as to allow of making that grant, otherways than as in the course of a treaty for peace; which, as you are pleased to observe, was the sole object of the Act.

I said, moreover, that if they persisted in this demand there could be nothing done until the meeting of Parliament, and perhaps for some considerable time thereafter. That certain articles had been already agreed upon; and if we went on and settled the treaty on that footing, with independence standing as the first article of it, we might give opportunity to the foreign treaties to be going on at the same. So as, for a conclusion of general peace, there might be nothing wanting, at the meeting of Parliament, but a confirmation of the said first article, in case it should be then thought necessary; which I imagined would not be the case.

In answer to this, Mr. Jay said, there could be no judgment formed as to when the foreign treaties would end, and that until that with France was concluded, they of the Colonies could not give us either peace or truce, nor could they presume, so much as to give an opinion of the demands of France, whatever they might be; since, until their independence was acknowledged absolutely; and unconnected with treaty, they were as no body, and as no people. And France could tell them so, if they were to pretend to interfere; having failed in acquiring that character, for which they had jointly contended. And therefore they must go on with France, until England gave them satisfaction on the point in question. That to this they were bound by treaty; which their constituents were determined honestly and faithfully to fulfil.

64 That being the case, it could not be expected that they, as servants, could take it upon them to dispense with the said acknowledgment.

That by looking over the sundry resolves of their Congress, I might see that that assembly did not mean to seek for their character in an article of any treaty. And for that purpose Mr. Jay recommended

to me the perusal of sundry parts of their proceedings as they stood in the journals of the Congress, which he would mark out for me; and if I would extract, and send them to England they would serve, at least as an excuse, for them as Commissioners, in thinking themselves bound to abide by their demand. Mr. Jay accordingly gave me four volumes of their journals, with sundry passages marked out as above. Mr. Whiteford has been so good to copy them out, and they are enclosed.

Mr. Jay was kind enough also to read to me an article of their instructions to the same purpose, and likewise certain paragraphs of two late letters from his colleague, Mr. John Adams, in Holland, expressly declaring, that they ought not to proceed in a treaty with England until their independence is acknowledged.

In the course of these conversations it may be supposed this gentleman took frequent opportunities to refer to the offer by Mr. Grenville, to acknowledge their independence, in the first instance, which they always considered to be absolute, and unconnected in every shape with the process of a treaty: and could not conceive the reason why that which we were willing to give them in May, should be refused in August. If it proceeded from there being less confidence on our side on this occasion, the change ought to make them still more cautious than usual on their part. Mr. Jay also insisted on that offer of Mr. Grenville, as a proof, that the same thing being denied now, could not proceed from any supposition of restraint in the Enabling Act.

To avoid being tedious, I forbear repeating a great many more things to the same purpose which passed in those conversations with Mr. Jay.

Mr. Franklin being so much out of order, I could not think of disturbing him by frequent visits to Passy, and therefore continued taking proper opportunities of talking to Mr. Jay; and the more readily that by any judgment that I could form of his real intentions, I could not possibly doubt of their pointing directly at a speedy conclusion of the war; and also leaning as favourably to the side of England, as might be consistent with the duties of the trust he has undertaken.

To convince me that nothing less than this stood in the way of agreeing to my request of accommodating this difficulty in some shape or other, he told me at last that if Dr. Franklin would consent, he was willing, in place of an express and previous acknowledgment of independence, to accept of a constructive denomination of character, to be introduced in the preamble of the treaty, by only describing their constituents as the thirteen United States of America. Upon my appearing to listen to this, and to consent to the substitution, he said: But you have no authority in your commission to treat with us under this denomination, for the sundry descriptions of the parties to be treated with as they stand in that commission will not bear such application to the character we are directed to claim and abide by, as to support and authenticate any act of your subscription to that purpose, and particularly to the substitution now proposed. There are such a variety of denominations in that commission, that it may be applied to the people you see walking the streets, as well as to us.



When, in reply, I imputed that variety to the official style of such like papers, Mr. Jay said it might be so, but they must not rest a question of that importance upon any such explanation. And since they were willing to accept of this, in place of an express declaration of independence, the least they could expect was, that it should appear to be warranted by an explicit authority in the commission.

I then asked if, instead of States, it would not do to say provinces; or States or provinces. Mr. Jay said neither of these would answer.

I then begged the favour of him to give me in writing, some sketch of the alteration he would have to be made in the commission. He readily did so, in a Minute which is inclosed; to be more largely explained, if necessary, when the commission comes to be made out. He also said that this new commission must be under the Great Seal, as the other was.

Before I quitted this subject I tried one other expedient for saving time, and avoiding the necessity of a new commission, by reading to Mr. Jay the second article of my instructions, which empowers me to treat with them, as commissioned by constituents of any denomination whatever, and told him that, although this power meant only to apply to character as assumed by them, and not to an admission by me without exception; yet in the present described character of States I would not only admit their assuming that appellation in the preamble of the treaty, but I would venture to repeat it, so as it should appear to be an acknowledgment on my part. In doing so I could not suppose any hazard of objection at home, considering what had passed on a former occasion, as above mentioned, together with the said power in my instructions. But Mr. Jay said they could admit of no authority but what was explicitly conveyed to me by a commission in the usual form. And therefore, to put an end to this difficulty, there was an absolute necessity of a new commission.

He at the same time told me, that to satisfy His Majesty's Ministers of the propriety of their conduct as persons under trust, he had sketched out a letter to me which I might send home if I pleased. He read the scroll of it to me, and promised to write it out fair and give it me before the departure of a courier.

So the affair rested yesterday, the 9th, when I received a letter from Dr. Franklin desiring a copy of the 4th article of my instructions, which I had shown to Mr. Jay, as formerly advised. Enclosed there is a copy of the doctor's letter.

Doubting as to the propriety of giving such things in writing, I thought it best to go out to the doctor, carrying the instructions  
 65 along with me, to see whether a reading of that article would satisfy him. But after reading it, as he still expressed a desire of having a copy, I told him that, although I had no orders to that purpose, yet at any hazard whatsoever, since he desired it, I would not scruple to trust it in his hands. And then sat down and wrote out a copy, and signed it, which, after comparing with the original, he laid by, saying very kindly that the only use he proposed to make of it, was, that, in case they took any liberties, for the sake of removing difficulties not expressly specified in their instructions, he might have this paper in his hands to show, in justification of their confidence. Or some words to that purpose; for I can't exactly quote them. The doctor then desired I would tell Mr. Jay that he wished to see him in the evening. He did go out that night and again this morning,

no doubt with a view of agreeing upon an expedient for removing those obstacles to their proceeding, as hinted at in the doctor's letter to me.

At noon, and since writing the above, Mr. Jay called, and told me that, upon further consultation and consideration of the matter, it was thought advisable not to press upon His Majesty's Ministers those arguments which he proposed to make use of in the letter he intended to write me, (and which it was understood I might send home) as considering it somewhat more than indelicate for them to pretend to see more clearly than the King's Ministers might do, the expediency, if not the necessity, at this critical time, to decide with precision and despatch, upon every measure that can be reasonably taken, for extricating Great Britain from out of the present embarrassing situation in which her affairs may continue to be involved, while there remains any hesitation in coming to an agreement with the States of America.

I liked the scroll of the letter so much when it was read to me yesterday that I was sorry it was withheld; I even pressed to be entrusted with it, in gratification of my own private wish that the writer of it might receive from good men, that share of applause that is due to those who wish well to the peace of mankind in general, and who seem not to be desirous of expunging altogether from their breast the impressions which had been fixed there by those habits and natural feelings by which individuals are tied in attachment to particular combinations of society and country. But I could not prevail, and was obliged to be contented with a recommendation to say that what I thought proper in my own way.

Finding it so, there remained for me, only to ask a single and final question of Mr. Jay. Whether in this, his last conference with Dr. Franklin this morning (for he was just then come in from him) it was settled between them, that upon my receiving from His Majesty a new commission under the Great Seal, such as the last, with an alteration only as before mentioned, of my being empowered to treat with them as Commissioners of the thirteen United States of America, naming the said States by their several provincial distinctions, as usual. I said whether, in that case, they would be satisfied to go on with the treaty and without any other declaration of independence, than as standing as an article of that treaty.

Mr. Jay's answer was, that with this they would be satisfied, and that immediately upon such commission coming over, they would proceed in the treaty; and, more than that, said they would not be long about it; and perhaps would not be over hard upon us in the conditions.

Having stated these conversations and other circumstances as they actually passed, to the best of my remembrance, it would not become me to go further by giving any opinion as to the measures proper to be taken in consequence thereof. Yet, Sir, I hope you will excuse me, and I think it my duty to say this much, that, by what I have been able to learn of the sentiments of the American Commissioners, in case the compromise now proposed (which with great difficulty they have been persuaded to agree to) is refused, there will be an end to all further confidence and communication with them, the consequences of which I will not presume to touch upon, either as regarding American or foreign affairs. On the other hand, if the expedient of a new

commission is adopted, I beg leave to say that no time ought to be lost in dispatching it.

There being now four couriers here, and as they may be wanted at home, it is thought proper that one of them, as extra, may go along with the Courier Lawsun, who goes from Mr. Herbert's office.

I have the honour to be Sir your most obedient and most humble Servant

RICHARD OSWALD.

*Mr. Jay's proposal for the new Commission to Mr. Oswald, enclosed in the foregoing.*

A commission (in the usual form) to Richard Oswald, Esq., to treat of peace or truce with Commissioners or persons vested with equal powers by and on the part of the thirteen United States of America, would remove the objections to which his present commission is liable, and thereby render it proper for the American Commissioners to proceed to treat with him on the subject of preliminaries.

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66 No. 64.—1782, September 11: Letter, Mr. Oswald to Lord Shelburne.

PARIS, 11th Sept. 1782

MY LORD: I had the honour of your Lordship's two letters of the 3rd instant, in consequence of which I took an opportunity of talking to Dr. Franklin on the subject of one of them in a general way, and by what he said I believe he is very much attached to his old friends, and wishes it may be thought so; and does not encourage misrepresentations to their prejudice. He put into my hands a letter from one of his correspondents, which it would appear he don't like, otherwise he would not have given it to me. There is a copy of it enclosed.

I have written to Mr. Townshend by this courier, that I have now settled with the American commissioners, that they will not insist on a previous and absolute acknowledgment of their independence, provided the commission for treating with them shall give them the denomination of the thirteen United States of America; and then they will be contented with their independence standing only as an article of treaty. With great difficulty they have yielded to this mode of compromise. I hope His Majesty will grant it. If it is refused, Mr. Fitzherbert, as well as me, may go home; and, in my opinion, it will not be an easy matter for any others to take up the same clue for extricating the nation out of its difficulties which I think is within our reach. Both the commissioners I really think are well disposed—much better than I expected some time ago. Mr. Jay seems to be particularly anxious that, as they have agreed to go even beyond the limits of their instructions, His Majesty's Ministers may not baulk their good intentions either by refusal or delay. To prevent this he scrolled out a letter to be directed to me, showing the necessity of our attention and compliance, with a view to my sending it home; but upon consulting further about it, he was advised by his friend to drop it, and would not give me the letter. I have mentioned this in my letter to-day to Mr. Townsend. However, I afterwards with

much intreaty, got him to give me the scroll, upon condition of my making only such use of it, as it should not appear in any public way, and so as it should not be heard of either here or elsewhere; not even by some of his own friends. I take the liberty to send that paper inclosed. When Mr. Townshend sees it, to which I can have no objections, I dare say he will excuse my not sending it to him, since I was not certain but that in such case it must be laid for inspection with other papers in the course of the negotiation. It is a clear proof of this commissioner being particularly desirous of smoothing the path of this awkward business. If the proposal above-mentioned is agreed to by His Majesty, which is only treating with them as States instead of colonies, I should think your Lordship may have the pleasure of meeting Parliament with a peace in hand. At least there would be a kind of certainty, as far as appearances can be relied on, to have so far satisfied America, as that she will not only control but spur on the other parties.

This would calm the disturbances at home, by disappointing those who may wish to inflame them. I was once afraid that if Mr. Grenville's proposition could not be regranted or repeated, that all the treaties must wait to have the fiat of Parliament to that grant for laying the first foundation of any of the negotiations. Now all that is required is to say States instead of colonies, and the whole machine is put into motion and will go its course. I will not allow myself to doubt of there being any hesitation on the subject. The only inconvenience is that there must necessarily be a new commission. If that is agreed on, I hope there will not be an hour lost in dispatching it.

By what I can understand, the French court, of all things, wish the colonies may not be satisfied, but rather that they should go on treating without any acknowledgment of independence, and have actually told them that they were seeking for the effect without the cause, since it could only with propriety arise out of the treaty; and so wishing that they should continue unfixed and unsatisfied until their affairs and those of their allies are satisfied, and there might be then no fear of check, but rather help from the American quarter. The Marquis de la Fayette is always going about the commissioners, anxious to know how they are like to proceed, on which head one of those gentlemen has had sundry applications, and he makes no scruple to give me these hints.

Mons<sup>r</sup>. de Vergennes, who keeps these agents in motion, it is said, is to send his secretary, M. Gerard, &c., over to London upon some particular negotiation, it is thought in favour of Spain. That court wishes to have the whole of the country from West Florida, of a certain width, quite up to Canada, so as to have both banks of the Mississippi clear, and would wish to have such cession from England before a cession to the colonies takes place. If that gentleman goes over, there can be no difficulty in amusing him. The Spaniards have the French title, and would gladly complete one to the whole of that district by patches from the English pretensions, which they could not hope for once we have agreed with the colonies.

I am very happy that your Lordship has so good a prospect of increasing strength to the present system. A quick and decisive settlement with the Americans will give it fresh vigour. I therefore hope your Lordship will bestow some attention to have that matter speedily carried forward. If it succeeds, it is thought France will

be moderate. The commissioners say they will be so in all events. In anything I have to do with those gentlemen I could not wish to be on better terms. I beg your Lordship's pardon for scratching away in this loose manner, but the truth is I have but just done with my official dispatch, and the courier's hour of appointment being at hand, I cannot detain him.

I have the honour to be with sincere regard and esteem My Lord,  
Your Lordship's most obedient humble servant

RICHARD OSWALD.

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67 *Extract from Mr. Jay's draft of a proposed letter to Mr. Oswald, enclosed in the foregoing.*

SIR It is with regret that we find ourselves obliged by our duty to our country to object to entering with you into negotiations for peace on the plan proposed. One nation can treat with another nation only on terms of equality, and it cannot be expected that we should be the first and only servants of Congress who would admit doubts of their independence. . . .

As to referring an acknowledgment of our independence to the first article of a treaty, permit us to remark that this implies that we are not to be considered in that light until after the conclusion of the treaty, and our acquiescing would be to admit the propriety of our being considered in another light during that interval. . . .

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No. 65.—1782, September: *Extract from Mr. Oswald's Minutes (enclosed in his letter to Lord Shelburne of September 11) regarding the intended treaty with the commissioners of the colonies and what is required of him by His Majesty's instructions on that head, August 29, 1782.*

Independence I presume, must be granted and confirmed by the same being signed and sealed as a preliminary.

If admitted into the treaty as the first article thereof, I suppose it will be understood that the same is only for form's sake; and most likely a separate acknowledgement will be demanded under all the formality of ratification.

The treaty being thus begun, and independence granted, I shall then ask the Commissioners, whether that is sufficient to satisfy them, so as an end may be put to the war between Great Britain and the thirteen States of America and shall wait their answer.

Supposing they make further demands, and that they are the same as proposed by Dr. Franklin on the 10th July last, and are divided into two classes as on that occasion: necessary or indispensable and advisable.

As to the class of advisable articles, I may reply that, however benevolent the object of them may be, as tending to promote a cordial reconciliation between the two countries, yet on various accounts it will be proper to leave those propositions out of the treaty altogether; and to settle such as are of more immediate concern, being those upon which a restoration of peace is to depend, and by which

a friendly intercourse and correspondence being renewed between Great Britain and those States, it is to be hoped that in the course thereof, each country will soon perceive the advantage of a more firm and intimate connection; and will accordingly concert every means that are most likely to answer that purpose: in which it may be expected that Great Britain will not fail on her part, although no particular stipulations on that head should be demanded of her on the present occasion.

In some such manner it may be tried to get over the difficulty of those advisable articles; and which is the more to be hoped for, that Dr. Franklin did not positively insist on them, and owned he had not any express directions on that subject; and proposed them only out of a friendly regard to Great Britain. In that case, I shall have only to consider of the mother class, being the articles said to be necessary or indispensable.

Necessary 1st. Independence, supposed to be granted as a preliminary.

Article 2. A settlement of boundaries between the thirteen States, and the King's Colonies of Canada, Nova Scotia, St. John's Island, Cape Breton, Newfoundland, East Florida and West Florida. As to this article, I beg leave to refer to a separate paper, in which there are some queries on this subject, on which I should wish to have instructions; and they will be the more necessary, as the Commissioners have sent over to London for a complete set of the best and largest maps of North America.

Article 3. A cession to the thirteen States, or to the Congress of that part of Canada that was added to it by Act of Parliament in the year 1774, said to be necessary and indispensable.

The question is, whether His Majesty will consent to it.

If not granted, there would be a good deal of difficulty in settling the boundaries between that Colony and sundry of the thirteen States, especially on their western frontier, as the said addition sweeps round behind them; and I make no doubt a refusal would occasion a particular grudge, as a deprivation of an extent of valuable territory the several provinces had always counted upon as their own; and only waiting to be settled, and taken into their respective Governments, according as their population increased, and encouraged a farther extension westward.

I shall therefore suppose this demand will be granted upon certain conditions, or at least that certain conditions will be proposed to be annexed to the grant, as will hereafter be taken notice of.

Article 4. A freedom of fishery on the banks of Newfoundland, and elsewhere, said to be another indispensable article. This was proposed and read out of the minute by Dr. Franklin, on the 10th July under this general description. I did not then think it proper to ask for an explanation; nor whether he included a privilege of drying fish on the island of Newfoundland.

68 As to fishing on the Great Bank, or any other bank, I own I did not think it material to ask any questions, as I supposed the privilege would not be denied them; or, if denied, I doubted whether their exclusion could be maintained but by continuing in a state of perpetual quarrel with the people of the New England Governments. An explanation was still the less necessary, that a ques-

tion on the same subject would come under consideration in our treaty with France.

In the determination of the last point, perhaps it may be no loss to Great Britain, that the Americans are (with respect to the fishing part) admitted to an equal privilege with the French.

Those four articles were, to the best of my remembrance all that were said by the Doctor on the 10th July, as indispensable in a settlement of any kind.

The others, or what he called adviseable and proper to reconcile the Americans to a cordial and friendly correspondence with Great Britain; and which indeed he thought were necessary to erase those impressions of resentment for past injuries, which otherways must remain on the minds of the inhabitants of those Colonies for ages to come, viz. :—

Adviseable 1st. A sum of Five or 600,000*l.* to be granted by Great Britain as an indemnification to the sufferers of the thirteen States, by the burning and destroying their towns, houses, and other property.

Article 2. Some sort of an acknowledgment, in some public Act of Parliament or other ways, of our concern for those misfortunes, &c.

Article 3. American ships and trade to be on the same footing in England and Ireland, as our own ships and trade. The like privileges in America in favour of English and Irish ships.

This proposal (to judge of the expediency of it with regard to Great Britain) would require an explanation, but I did not in the then situation of things think it proper to ask for any.

Article 4. A surrendry to the Congress of every part, or the remainder of Canada after the said reduction to the limits preceding 1774 before-mentioned; reserving to Great Britain a full freedom of fishing, and of imports and exports in general, free of all charge of import or other duties.

These were the adviseable articles, which, at opening the treaty I shall, as I have said, endeavour to persuade the Commissioners to pass over, and to confine their demands to the others said to be necessary and indispensable. Possibly when it comes to a treaty there may be some addition to these last mentioned. Until then the above is all that could have been learnt of those gentlemen's intentions.

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On the subject of the Canada lands, which were added to that colony in 1774, in case His Majesty should consent to resign them to the Congress, there is still more to be said than as above, for the unpatented lands in the several provinces; since in granting the sovereignty to Congress, His Majesty may except and specially reserve the property to his own disposal.

In April when I first came over, Dr. Franklin mentioned this resignation only as a thing very desirable, for the sake of preventing disturbances and quarrels between the inhabitants living under different Governments; and proposed, in case the grant was made, that the lands should be sold, and the value applied for the relief of sufferers on both sides of the question; as expressly specified in a writing which he put into my hands, with liberty of perusal where necessary. Since then, and particularly in July last, he proposed that these back lands of Canada should be given up and no allowance made out of that fund for the sufferers on either side; but on the contrary,

that a sum of money should be granted by Great Britain for the sufferers in the American cause. I am afraid it will not be possible to bring him back to the proposition made in April [last], although I shall try it.

Meantime I can plead that by resigning the sovereignty into the hands of Congress, the purpose for which he wished to have these additional lands given up (being that of preventing quarrels amongst the inhabitants) will not be disappointed, since the Congress may settle them in any manner they think proper, whichever way the value or price of the land is disposed of.

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No. 66.—1782, September 17: Extract from letter, Mr. Adams to Mr. Dana.

THE HAGUE, September 17, 1782.

MY DEAR FRIEND: It grieves me when I think how long it is since I wrote to you. But my head and hands and heart have been all full.

I sent to the care of the Dutch ambassador General Washington's miniature for you; should be glad to know whether you have received it. I have also sent along several despatches from our Secretary of foreign affairs. Have you received them?

*Fitzherbert's commission is to treat with the King of France and the ministers quorumcunque principum vel statuum quorum interesse poterit; and Oswald's is to treat, consult of, agree, and conclude with any commissioner or commissioners named, or to be named, by the said colonies or plantations, or with any body or bodies, corporate or politic, or any assembly or assemblies, or description of men, or any person or persons whatsoever, a peace or a truce with the said colonies or plantations, or any of them or any part or parts thereof. I said his commission; but he has none. He has only an order to the Attorney-General to make out such a commission.*

Thus, you see, there is yet no proof of Shelburne's sincerity. In short, nothing will be done until Parliament meets, nor then, unless they take upon them to acknowledge the independence of the United States.

If Gibraltar is succored<sup>a</sup> and holds out, Britain will not cede it. In short, we shall have another campaign. No peace until 1784, if then.

\* \* \* \* \*

No. 67.—1782, September 19: Extract from letter, Mr. Oswald to Lord Shelburne.

PARIS 19th Septemr 1782

MY LORDS, When anything occurs which may help to smooth the way to a reconciliation with the Americans, I cannot resist the occasion; although sometimes I may thereby incur the charge of

<sup>a</sup> Spain and France had on the 13th September, 1782, failed to reduce Gibraltar.



officiousness. That may possibly be the case at present, in my presuming once more to trouble your Lordship on the subject of Mr. Laurens. He is now going over to America, I believe not ill-disposed towards England.

By his capacity and great activity he is capable of doing good. Yet being perhaps soured with prejudices of resentment, it were to be wished, however unjust, that they could be softened by any means of notice and civility that may tend to quiet those irritations of temper, which too often interfere with the operation of the soundest and most benevolent principles. . . .

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No. 68.—1782, *September 19: Warrant for Mr. Oswald's Second Commission.*

GEORGE R.

Our will and pleasure is, and We do hereby authorise and command you forthwith to prepare a bill for our signature to pass our Great Seal of Great Britain, in the words or to the effect following, vizt.:—

George the Third, by the grace of God, King of Great Britain, France and Ireland, Defender of the Faith &c. To our trusty and well-beloved Richard Oswald, of the City of London, Esquire, greeting. Whereas by virtue of an Act passed in the last session of Parliament, intituled "An Act to enable His Majesty to conclude a peace or truce with certain Colonies in North America therein mentioned," it is recited: "That it is essential to the interest, welfare, and prosperity of Great Britain and the Colonies or Plantations of New Hampshire, Massachusetts Bay, Rhode Island, Connecticut, New York, New Jersey, Pennsylvania, the three lower counties on Delaware, Maryland, Virginia, North Carolina, South Carolina and Georgia in North America, that peace, intercourse, trade, and commerce should be restored between them."

Therefore, and for a full manifestation of our earnest wish and desire, and of that of our Parliament, to put an end to the calamities of war, it is enacted that it should and might be lawful for us to treat, consult of, agree, and conclude with any Commissioner or Commissioners named, or to be named by the said Colonies or Plantations, or any of them respectively, or with any body or bodies, corporate or politic, or any assembly or assemblies, or description of men, or any person or persons whatsoever, a peace or a truce with the said Colonies or Plantations, or any of them, or any part or parts thereof, any law, Act or Acts of Parliament, matter, or thing to the contrary in any wise notwithstanding.

Now know Ye, that We, reposing a special trust in your wisdom, loyalty, diligence, and circumspection in the management of the affairs to be hereby committed to your charge, have nominated and appointed, constituted and assigned, and by these presents do nominate and appoint, constitute and assign You, the said Richard Oswald, to be our commissioner in that behalf, to use and exercise all and every the powers and authorities hereby entrusted and committed to you, the said Richard Oswald, and to do, perform and execute all other matters and things hereby enjoined and committed to your care during our will and pleasure, and no longer, according to the tenor of these our letters patent; And it is our royal will and pleasure, and

we do hereby authorise, empower, and require you, the said Richard Oswald, to treat, consult of, and conclude with any Commissioners or persons vested with equal powers, by and on the part of the thirteen United States of America, viz., New Hampshire, Massachusetts Bay, Rhode Island, Connecticut, New York, New Jersey, Pennsylvania, the three lower counties on Delaware, Maryland, Virginia, North Carolina, South Carolina and Georgia, in North America, a  
 70 peace or a truce with the said United States, any law, Act or Acts of Parliament, matter, or thing to the contrary in any wise notwithstanding.

And it is our further will and pleasure that every regulation, provision, matter, or thing which shall have been agreed upon between you, the said Richard Oswald, and such Commissioners or persons as aforesaid with whom you shall have judged meet and sufficient to enter into such agreement, shall be fully and distinctly set forth in writing, and authenticated by your hand and seal on one side, and by the hands and seals of such Commissioners or persons on the other, and such instrument so authenticated shall be by you transmitted to us through one of our Principal Secretaries of State.

And it is our further will and pleasure that you, the said Richard Oswald, shall promise and engage for us, and in our royal name and word, that every regulation, provision, matter, or thing which may be agreed to and concluded by you, our said Commissioner, shall be ratified and confirmed by us in the fullest manner and extent, and that we will not suffer them to be violated or counteracted, either in whole or in part by any person whatsoever.

And We do hereby require and command all our officers, civil and military, and all other our loving subjects whatsoever, to be aiding and assisting unto you, the said Richard Oswald in the execution of this our Commission, and of the powers and authorities herein contained, Provided always, and We do hereby declare and ordain that the several offices, powers and authorities hereby granted shall cease, determine, and become utterly null and void on the First day of July, which shall be in the year of Our Lord, one thousand seven hundred and eighty-three, although we shall not otherwise, in the meantime have revoked and determined the same.

And Whereas in and by our said Commission and letters patent under our great seal of Great Britain, bearing date the 7th day of August last, We nominated and appointed, constituted and assigned him, the said Richard Oswald, to be our Commissioner to treat, consult of, agree and conclude with any Commissioner or Commissioners named, or to be named, by certain Colonies or plantations in America, therein specified a peace or a truce with the said Colonies or plantations.

Our will and pleasure is, that you insert a clause in the said Bill revoking and determining our said Commission and letters patent, and all and every power, article and thing therein contained.

And for so doing, this shall be your warrant. Given at our court at St. James's the 19th day of September 1782, in the twenty-second year of our reign.\*

By His Majesty's Command,

THO. TOWNSEND.

To our ATTORNEY OR SOLICITOR GENERAL.

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\*The Commission bears date the 21st September, 1782.

No. 69.—1782, September 20: Letter, Mr. Townshend to Mr. Oswald.

WHITEHALL, 20th September, 1782.

MR. OSWALD

SIR, I received on Saturday last your Packets of the 10th and 11th of this month.

A meeting of the King's Confidential Servants was held as soon as possible, to consider the contents of them, and it was at once agreed to make the alteration in the Commission proposed to you by Mr. Jay. I trust that the readiness, with which this proposal was accepted, will be considered as an ample Testimony of the openness and sincerity with which the Government of this Country is disposed to treat with the Americans.

The Commission is passing with as much dispatch as the forms of office will allow; but I thought it material that no delay should happen in giving you notice of the determination of His Majesty's Council upon this subject.

I am &c.

T. TOWNSHEND.

No. 70.—1782, September 23: Extract from letter, Lord Shelburne to Mr. Oswald.

MR. OSWALD

SHELburne HOUSE 23d Sept 1782

DEAR SIR Having said and done every thing which has been desired, there is nothing left for me to trouble you with except to add, that we have put the greatest confidence, I believe, was ever placed, in men, in the American commissioners. It is now to be seen, how far they or America are to be depended upon.

71 I will not detain you with enumerating the difficulties, which have occurred. There never was greater risk run.

I hope the public will be the gainer. Else our heads must answer for it and deservedly.

No. 71.—1782, September 24: Extract from letter, Mr. Townsend to Mr. Oswald.

RICHARD OSWALD ESQR

WHITEHALL, 24th Sept 1782

SIR, I now send you the Commission, which has met with no delay more than was absolutely necessary for the forms through which it was to pass.

I hope that the frankness with which we deal, will meet with a suitable return.

I have ordered the office to be searched for all Papers which can give any information concerning the boundaries which you mention in your letter of the 11th of this month; but it has not been in my power to have so exact a state of that matter, made out, as may be necessary for your direction in your Negotiation.

I think it necessary to inform you that I received yesterday dispatches from Sir Guy Carleton, and I enclose to you a copy of his letter to General Washington on the subject of Mr. Grenville's Proposal of Independence in the first instance, and not as a conditional

Article in the General Treaty, and also a Copy of a Paper printed by the Congress in consequence of General Washington's communication of that Letter to him.

\* \* \* \* \*

No. 72.—1782, October 2: *Extract from letter, Mr. Oswald to Mr. Townshend.*

PARIS 2d October 1782

SIR I had the honour of your letters of the 20th and 24th September; the last accompanying His Majesty's new Commission, altered as desired. Upon receipt, I produced it to the American Commissioners, and they were entirely satisfied therewith.

I have also to advise that yesterday I delivered to them a copy of said Commission after its being compared with the original, and certified by me; and in exchange received from them a copy of their Commission. . . .

\* \* \* \* \*

P. S.—. . . Drying fish in Newfoundland, I find is to be claimed as a privilege in common, we being allowed the same on their shores. I did not think it proper to say much on this subject at present, and wish that granting this freedom may be found to be of no material loss to England being afraid if refused, it may be a great loss in other things.

\* \* \* \* \*

No. 73.—1782, October 5: *Articles of the Treaty proposed to be concluded between His Majesty and the United States of America.*

ARTICLES agreed upon by and between Richard Oswald Esq., the Commissioner of His Britannic Majesty for treating of peace with the Commissioners of the United States of America on the behalf of his said Majesty on the one part. And Benjamin Franklin, John Jay of the Commissioners of the said States for treating of peace with the Commissioner of his said Majesty on their behalf, on the other part; to be inserted in, and to constitute the treaty of peace proposed to be concluded between the Crown of Great Britain and the said United States. But which treaty is not to be concluded until His Britannic Majesty shall have agreed to the terms of a peace between France and Britain, proposed or accepted by His Most Christian Majesty; and shall be ready to conclude with him such treaty accordingly. It being the duty and intention of the United States not to desert their Ally, but faithfully, and in all things, to abide by and fulfil their engagements with His Most Christian Majesty.

Whereas reciprocal advantages and mutual convenience are found by experience to form the only permanent foundation of peace and friendship between States, It is agreed to frame the articles of the proposed treaty on such principles of liberal equality and reciprocity, as that partial advantages (those seeds of discord) being excluded,

27 such a beneficial and satisfactory intercourse between the two Countries may be established, as to promise and secure to both, the blessings of perpetual peace and harmony.

1. His Britannic Majesty acknowledges the said United States, viz. New Hampshire, Massachusetts Bay, Rhode Island and Providence plantations, Connecticut, New York, New Jersey, Pennsylvania, Delaware, Maryland, Virginia, North Carolina, South Carolina and Georgia, to be free, sovereign, and independent States; That he treats with them as such; and for himself, his Heirs and Successors, relinquishes all claims to the Government, Propriety, and territorial rights of the same and every part thereof. And that all disputes which might arise in future on the subject of the Boundaries of the said United States may be prevented, it is hereby agreed and declared, that the following are, and shall remain to be, their boundaries viz.—

The said States are bounded north by a line to be drawn from the northwest angle of Nova Scotia along the highlands which divide those rivers which empty themselves into the River St. Lawrence from those which fall into the Atlantic Ocean, to the northermost head of Connecticut River; thence down along the middle of that river to the forty fifth degree of north latitude, and thence due West in the Latitude forty five degrees north from the Equator to the northwesternmost side of the River St. Lawrence or Cadaraqui, thence straight to the south-end of the Lake *Nipissing*, and then straight to the source of the River Mississippi; *West*, by a line to be drawn along the middle of the River Mississippi from its source to where the said line shall intersect the thirty first degree of north latitude. South, by a line to be drawn due east from the termination of the line last mentioned in the latitude of thirty one degrees north of the Equator to the middle of the River Appalachicola or Catahouchi, thence along the middle thereof to its junction with the Flint River, thence straight to the head of St. Mary's River; and thence down along the middle of St. Mary's River to the Atlantic Ocean. And *East\** by a line to be drawn along the middle of St. John's River, from its source to its mouth in the Bay of Fundy comprehending all islands within twenty leagues of any part of the shores of the United States, and lying between lines to be drawn due east from the points where the aforesaid boundaries between Nova Scotia on the one part, and East Florida on the other, shall respectively touch the Bay of Fundy and the Atlantic Ocean.

2. From and immediately after the conclusion of the proposed Treaty, there shall be a firm and perpetual Peace between His Britannic Majesty and the said States, and between the subjects of the one and the citizens of the other. Wherefor all hostilities, both by sea and land, shall then immediately cease; all prisoners on both sides shall be set at liberty; and His Britannic Majesty shall forthwith, and without causing any destruction, withdraw all his Armies, Garrisons and Fleets, from the said United States, and from every Port, Place, and Harbour within the same; leaving in all Fortifications the American Artillery that may be therein. And shall also order and cause all Archives, Records, Deeds, and Papers belonging to either of the said States or their citizens, which in the course of the war may have fallen into the hands of his officers, to be forthwith restored and delivered to the proper states and persons to whom they belong.

3. That the subjects of His Britannic Majesty and people of the said United States shall continue to enjoy unmolested the right to take fish of every kind on the banks of Newfoundland and other places where the inhabitants of both countries used formerly, viz. before the last war between France and Britain, to fish; and also to dry and cure the same at the accustomed places, whether belonging to His said Majesty or to the United States. And His Britannic Majesty and the said United States will extend equal privileges and hospitality to each other's fishermen as to their own.

4. That the navigation of the River Mississippi from its source to the ocean shall for ever remain free and open, and that both there and in all rivers, harbours, lakes, ports and places, belonging to His Britannic Majesty or to the United States in any part of the world, the merchants and merchant ships of the one and the other shall be received, treated and protected like the merchants and merchant ships of the Sovereign of the country. That is to say the British merchants and merchant ships on the one hand shall enjoy in the United States, and in all places belonging to them, the same protection and commercial privileges, and be liable only to the same charges and duties as their own merchants and merchant ships. And on the other hand, the merchants and merchant ships of the United States shall enjoy in all places belonging to His Britannic Majesty the same protection and commercial privileges, and be liable only to the same charges and duties as British merchants and merchant ships saving always to the chartered trading companies of Great Britain, such exclusive use and trade, and their respective posts and establishments, as neither the other subjects of Great Britain, nor any the most favoured nation participate in.

A true copy of what has been agreed on between the American Commissioners and me, to be submitted to His Majesty's consideration.

RICHARD OSWALD.

PARIS, *October 8, 1782.*

\* Alteration to be made in the inclosed Treaty respecting the boundaries of Nova Scotia. Viz. :—

At the word East—the true line shall be settled by Commissioners as soon as conveniently may be after the war.

73 No. 74.—1782, *October 7: Extract from letter, Mr. Oswald to Mr. Townshend.*

PARIS *7th Oct. 1782.*

SIR Referring to my letters of the 2nd and 3rd, by the courier North, and to one of the 5th, which goes under this cover, I have the honour to send you enclosed the plan or articles of a final treaty proposed between Great Britain and the thirteen States of America; which being settled, was delivered to me by Mr. Jay on the 5th in his own handwriting, after it had been approved of by Dr. Franklin, as he at same time informed me, and which by any conversation I previously had with those gentlemen, or since I received it, may be considered as including the whole of their demands, necessary or advisable, and if agreed to on our part, as a complete and finished

treaty; with an exception only of the usual formalities of reference to Commissions, &c. Also that, as to the point of ratification, so as to establish peace, it must wait for our conclusion with France, as you will please to observe is declared in the preamble.

After considering the terms, as they stand in the treaty, I thought there was no reason to object to the boundaries lines of the thirteen States, excepting that there is a part of Nova Scotia cut off on the Bay of Fundy. I called on Mr. Jay this morning, and found him willing to set that matter to rights, so as the Massachusetts Government shall have no more of that coast than they had before the war. He took his directions from maps, and they are not distinct, nor do they agree in this matter. This is in the meantime referred, to be afterwards properly adjusted.

I next talked to him about the claim of drying fish on the Island of Newfoundland, as not having been mentioned, or included in Dr. Franklin's necessary articles. Mr. Jay said he put them into the treaty to avoid an appearance of unneighbourly distinctions, and considering it as not material to us, there being room enough for both of us, as well as for the French. But if we thought otherwise, he would not say but they might give it up, rather than we should be dissatisfied about it, believing their people would not much value the privilege, and would in general choose to bring their fish to their own coasts, as they used to do.

On this subject, if I might speak my opinion, it is a question whether we ought to insist on their exclusion, while the French enjoy that conveniency: and on that account, although the Americans had not desired a similar privilege, whether there would have been any harm in offering it to them, since their exclusion would be always attended with a grudge.

In my last letters I advised that the value of the ungranted lands in the several Colonies could not be saved as a fund at His Majesty's disposal, as the Commissioners insisted that every property belonging to the Crown must go with other rights within the Thirteen States. In case, Sir, you should think it proper that I should press this matter farther, you will be pleased to let me know. At same time I must confess that considering the little chance of success, and that I look upon the treaty as now closed, I doubt whether it would be proper to open it on this account. In any other case, one would not say so; but where there is no control on one side and circumstances press for decision, perhaps it may be proper, if other things are right, not to insist on a provision of this kind standing part of the treaty. At same time, as a great sum may be raised out of this property, as well as out of what is cut off from Canada, it would not be taken amiss by the Commissioners, if it was submitted to their consideration and equity, in a separate way from any determination regarding the treaty.

A separate letter on that subject, laying claim to their justice and good sense, in distinguishing a resignation of property no way connected with those of legislation and governments, and intended for the relief of unfortunate sufferers, may have some weight with the several provinces in softening their resentment against some of those people, and extending their indulgence to them accordingly in the way of restitution or indemnification. But as I have said, if the treaty is otherways approved of, I offer it as my humble opinion that an expectation of this kind had best be suggested independently, and sent me in a separate letter, to be laid before the Commissioners.

I touched also upon the debts due to British subjects, and my apprehensions of loss by confiscations. Mr. Jay replied that he had heard of no such confiscations, but in the province of Maryland; which he seemed not to approve of. However, as I had before been satisfied that they, as Commissioners, could do nothing in the matter, I did not insist further upon it.

Before we parted, this gentleman came again upon the subject of West Florida, and pled in favour of the future commerce of England, as if he had been of her Council, and wishing to make some reparation for her loss. Amongst other things, he repeated, that there is water carriage by rivers or lakes all the way within land from Canada to the mouth of the Mississippi, excepting a few short stoppages of portage; so that, for outward merchandize, we might engross the whole of their supplies, for a stretch of country between two and three thousand miles, and in like manner (chiefly by means of the Mississippi) receive their country commodities in return, and particularly should embrace the whole of the fur trade. In all which I am satisfied he is well founded.

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[1782, October 8: *Treaty of Amity and Commerce between the United States and the Netherlands*. (Ratified January 22, 1783.)]

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74 No. 75.—1782, October 11: *Extract from Mr. Oswald's Minutes of sundry Articles recommended in his Instructions, not included in the Treaty*.

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5. Drying fish in Newfoundland, excepted in the Instructions but demanded in the treaty. Quere, if material. Supposed not so. When the privilege of fishing was asked by Dr. F. in August, this was not mentioned particularly, and I did not think it proper to appear so attentive and tenacious of such like indulgences so as to ask any questions about it. And when lately demanded, although I objected, yet did not insist, for the same reason. And now although Mr. Jay seems not positively to say that the privilege is indispensable, yet I own I wish much that it may not be considered in England as a matter of such consequence as to occasion a claim of exception. For to tell the truth, when Dr. Franklin stated the privilege of fishing, I suspected drying was included, though not mentioned. Otherways I should have wondered at his asking our leave for Americans catching fish in the open seas, so near their own coasts, and wrote so in my letters at the time.

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No. 76.—1782, October 13: *Letter, Mr. Jay to Gouverneur Morris*.

PARIS, October 13, 1782.

DEAR MORRIS: I have received your *festina lente* letter, but wish it had been at least partly in cipher; you need not be informed of my reasons for the wish, as by this time you must know that seals are, on



this side of the water, rather matters of decoration than of use. It gave me nevertheless great pleasure to receive that letter, it being the first from you that had reached me, the Lord knows when. I find you are industrious, and of consequence useful, so much the better for yourself, for the public, and for our friend Morris, whom I consider as the pillar of American credit.

The King of Great Britain, by letters patent under the great seal, has authorised Mr. Oswald to treat with the commissioners of the *United States of America*. His first commission literally pursued the enabling act, and the authority it gave him was expressed in the very terms of that Act, viz, to treat with the colonies, and with any or either of them, and any part of them, and with any description of men in them, and with any person whatsoever, of and concerning peace, &c.

Had I not violated the instructions of Congress, their dignity would have been in the dust; for the French minister even took pains, not only to persuade us to treat under that commission, but to prevent the second, by telling Fitzherbert that the first was sufficient. I told the minister that we neither could nor would treat with any nation in the world on any other than on an equal footing.

We may and we may not have a peace this winter. Act as if the war would certainly continue; keep proper garrisons in your strong posts; and preserve your army sufficiently numerous, and well appointed, until every idea of hostility and surprise shall have completely vanished.

I could write you a volume, but my health admits only of short intervals of application.

Present my best wishes to Mr. and Mrs. Morris and such other of our friends as may ask how we do.

I am, &c.,

JOHN JAY.

No. 77.—1782, October 14: *Extract from letter, Dr. Franklin to Mr. Livingston.*

PASSY, October 14, 1782.

SIR: I have but just received information of this opportunity, and have only time allowed to write a few lines.

In my last, of the 26th past, I mentioned that the negotiation for peace had been obstructed by the want of due form in the English commissions appointing their plenipotentiaries. In that for treating with us the mentioning our States by their public name had been avoided, which we objected to; another is come, of which I send a copy enclosed. We have now made several preliminary propositions, which the English minister, Mr. Oswald, has approved and sent to his court. He thinks they will be approved there, but

75 I have some doubts. In a few days, however, the answer expected will determine. By the first of these articles the King of Great Britain renounces for himself and successors all claim and pretension to dominion or territory within the thirteen United States; and the boundaries are described as in our instructions, except that the line between Nova Scotia and New England is to be settled by commissioners after peace. By another article the fishery in the American seas is to be freely exercised by the Ameri-

cans wherever they might formerly exercise it while united with Great Britain. By another the citizens and subjects of each nation are to enjoy the same protection and privileges in each other's ports and countries, respecting commerce, duties, &c., that are enjoyed by native subjects. The articles are drawn up very fully by Mr. Jay, who, I suppose, sends you a copy; if not, it will go by the next opportunity. If these articles are agreed to I apprehend little difficulty in the rest. Something has been mentioned about the refugees and English debts, but not insisted on, as we declared at once that whatever confiscations had been made in America, being in virtue of the laws of particular States, the Congress had no authority to repeal those laws, and therefore could give us none to stipulate for such appeal.

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No. 78.—1782, October 20: Lord Shelburne's Instructions to Mr. Henry Strachey.

LORD SHELBURNE'S INSTRUCTIONS to me, written by him at Lord Grantham's, and delivered to me there on Sunday, the 20th October, 1782. Present, Lord Shelburne, Mr. Townshend, Lord Grantham, Mr. Orde.

SUNDAY, THE 20TH OCTOBER, 1782.

Urge our right to all Backlands, the claim of the Provinces having been bounded by the Proclamation of 1763, and acquiesced in.

Urge the right of the King to *the soil* under the Charters however understood.

Urge the French boundary of Canada.

Urge the boundary established by the Quebec Act, which was acquiesced in.

Urge all this with a view to obtain some compensation for the Refugees, either by a direct cession of territory in their favour, or by engaging the half, or some proportion of what the back lands may produce when sold, or a sum mortgaged on those lands, or at least a favorable boundary of Nova Scotia, extending it if possible, so as to include the Province of Maine; if that cannot be, the Province of Sagadahock, or at the very least to include Penobscott.

Urge the just boundaries of West Florida.

But, it is understood that if nothing of this can be obtained after the fairest and most strenuous trials, it may be left to commissaries to settle, and the American propositions accepted, leaving out the right of drying fish on the Island of Newfoundland, and confining them to what hitherto they have used, a *drift fishery*; and expunging all the last article except what regards the Mississippi, administration having no power as to the Act of Navigation.

It must appear authentically<sup>(1)</sup> that every instance has been used in favor both of the Refugees and of the debts prior and subsequent to 1775, and the most favorable terms obtained, if possible, in the way of absolute and positive engagement; if not, in the way of recognition.

Mr. Strachey to return as soon as possible.

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<sup>(1)</sup> [*Marginal note.*].—That is a signed answer.

The Refugees are of great importance; but, if the Province of Maine be left to Nova Scotia, and the Americans can be brought to join us in regard to West Florida, there are resources which may satisfy them, but the debts require the most serious attention—that *honest* debts may be *honestly* paid in honest money—no Congress money.

Some security as to American courts of justice, in lieu of their right of appeal, which subsisted when the debts were contracted.

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No. 79.—1782, October 21: Letter, Lord Shelburne to Mr. Oswald.

Private.

SHELburne House 21 Oct. 1782

RICHARD OSWALD Esqr.

DEAR SIR I am to acknowledge your letters of the 19th September and 11th October upon the subject of Mr. Laurens. . . .

I trust and hope you are better founded in your judgment of the American Commissioners now at Paris. I am disposed to expect everything from Dr. Franklin's comprehensive understanding and character; and, as I know nothing to the contrary, I am open to every good impression you give us of Mr. Jay. But as you desire to be assisted by my advice, I should act with great insincerity, if I

76 did not convey to you that I find it difficult, if not impossible, to enter into the policy of all that you recommend upon the subject both of the fishery and the boundaries, and of the principle which you seem to have adopted of going before the Commissioners in every point of favour or confidence. The maxim is not only new in all negotiations; but I consider it as no way adapted to our present circumstances, but as diametrically opposite to our interests in the present moment.

Supposing the Colonies to return to the state they were in in 1763, I consider it as of the utmost importance to keep the fishery as distinct as possible, to avoid the numberless disputes which occurred perpetually before the present war; but the separation on the point of taking place, makes it indispensable for the welfare of both countries, to prevent future contention.

In regard to the refugees, I speak of the mass of them, avoiding to enter into particular odious cases, which must always occur in such great concussions;—Can there in nature be anything more reasonable than to insist on the justice due to them? Nor can a single argument be offered against it, except what you urge of the particular situation of the Commissioners acting under Thirteen Provinces with different interests, and in fact no common centre. To remedy this, the matter of the boundaries and back lands naturally presents itself. Independently of all the nonsense of charters—I mean when they talk of extending as far as the sun sets—the soil is, and has always been, acknowledged to be the King's. For the good of America, whatever the Government may be, new provinces must be erected on those back lands and down the Mississippi; and supposing them to be sold, what can be so reasonable as that part of the produce, where the King's property alone is in question, should be applied in

part to furnish subsistence to those, whom for the sake of peace, he can never, consistently with his honour, entirely abandon.

The debts due to our merchants previous to 1775 cannot be lightly passed over. They regard some of our most considerable merchants, who are full of apprehensions, and are making daily applications to Government. *Honest* debts must be *honestly* paid and in *honest* money. And to prove them honest some security is expected in lieu of the right of appeal which existed when they were contracted. These are considerations dictated by honour and justice, which can never be sufficiently dwelt and insisted on.

But I beg to recommend the question of policy to your most serious reflection. If we are to look to regain the affections of America, to reunion in any shape, or even to commerce and friendship, is it not the last degree of consequence to retain every means possible to gratify America at a future, I hope not very distant day, when the negotiation will not be carried on at a foreign capital, not under the eye, if not control, of inveterate enemies, nor under the reputed impulse of absolute necessity? This is to me such an obvious line of policy that I cannot believe it possible for it to escape your attention, and indeed am very clearly of opinion that your whole endeavours should be pointed to it. And if there is the disposition you mention in the Commissioners towards Great Britain, and it is stated to them with address, I should think they might be brought to enter into it, as they must feel it perfectly consistent with the language hitherto held to them. It is at the same time certainly of importance to preserve their confidence and good-will, where it can be done without sacrifices which mere speculation can never warrant. . . .

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No. 80.—1782, October 22: Letter, Mr. Townshend to Mr. Oswald.

[ABOUT 22ND OCTOBER, 1782.]

SIR, As I am sending over a confidential Person, to converse with you upon the Subject of Boundaries, it is unnecessary to write much upon this or any other subject by this messenger as you will give entire credit to Mr. Strachey in all respects. You may however without delay inform the Commissioners that we insist upon a more extensive Boundary to the South-West of Nova Scotia, than is proposed by the Plan of Treaty transmitted in your letter of the 7th inst. We extend our pretensions to Sogaduhoch and the Province of Main.

You will also particularly state our Claim to the back Country, and urge the necessity we are under of claiming it, that the King may be enabled to make some Compensation to the Refugees. In this view, the Point is to be insisted upon; nor is His Majesty disposed to recede from it, unless the United States will consent to make a just Provision for those unfortunate sufferers; or, unless some other means of answering the same end should arise, in the course of the Treaty with France and Spain.

Another principal object, is, the Recovery of Debts due to British Subjects before the War: and therefore, if the American Commissioners repeat their declaration that they are not authorised to treat thereupon, you will press them to state, either directly to the several

Provinces, or through the Medium of Congress, their Expectations that Demands of so equitable a Nature, *shall* be adjusted.

And here I cannot help observing, that although the Congress Commission expressly delegates complete Powers to negotiate, and to conclude, a Treaty, yet from the language hitherto held, we are given to understand that they are confined to receiving only, as if a Treaty were not an Instrument of mutual Cession. The American Commissioners declare what they are ready to accept; but when

77 we state our Expectations, they decline giving us the smallest satisfaction; they alledge a deficiency of Power in their Instructions, and refer us to the separate Governments of the several Provinces. The propriety of this Observation cannot fail to strike you when you reflect upon the manner we have been dealt with, in respect to the Two Points above mentioned; Points which the American Commissioners themselves allow to be justly claimable, and in which our National Honor is most peculiarly concerned.

On the subject of the 3rd Article, I am commanded by the King to observe to you, that He is of opinion, if the Americans are to have the privilege of drying Fish on Newfoundland, it may be the Source of frequent Disputes: and as they will have sufficient Territory for their Accommodation in that respect, at no inconvenient distance from the Fishery, His Majesty commands you to resist that Demand; exerting your endeavours at the same time, to convince the American Commissioners, that He is induced to refuse the Privilege here required, from an anxious desire to prevent any Interruption hereafter to that Harmony which he wishes may ever subsist between His Government and that of the United States, after the Conclusion of the Treaty.

The free Navigation of the River Mississippi as proposed in the beginning of the 4th Article, is adopted. But with regard to the universal idea contained in the remaining part of that Article, His Majesty is pleased, for the present, to postpone any Determination thereupon, because He thinks it will more properly come into discussion, when we enter upon a Treaty of Commerce, which he is very desirous shall take place.

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No. 81.—1782, October 23: Letter, Mr. Townshend to Dr. Franklin.

WHITEHALL, October 23, 1782.

SIR: As Mr. Strachey is going from hence to Paris with some particulars for Mr. Oswald, which were not easily to be explained in writing, I take the liberty of introducing him to your acquaintance, though I am not sure that he is not a little known to you. The confidential situation in which he stands with me makes me particularly desirous of presenting him to you.

I believe, sir, I am enough known to you for you to believe me when I say that there has not been from the beginning a single person more averse to the unhappy war or who wishes more earnestly than I do for a return of peace and mutual amity between Great Britain and America.

I am, with great regard, sir, your most obedient, humble servant,  
T. TOWNSHEND.

No. 82.—1782, October 23: Letter, Lord Shelburne to Mr. Oswald.

Private

SHELburne HOUSE 23d Oct. 82

DEAR SIR, On my return from Streatham this morning, I find Mr. Strachey has deferred his journey for the sake of some papers which were to be copied. This gives me an opportunity of writing to you a few lines, as it may be agreeable to you to know something more of him, than his being the confidential secretary of Mr. Townshend. He is a most amiable well-instructed man, and as it was judged proper that some person should be sent to explain the boundaries and the authentic documents, which were only to be found here, I thought it very lucky for your sake, and for that of the great object we have all in view, that Mr. Townshend's choice fell upon him.

You know sufficiently the nature of mankind not to be surprised at hearing that the opinions regarding Independence are not more stable, than political opinions generally are with us. You may also be assured of the fact that many of the most weighty advocates for Independence are strenuous upon the subject of boundaries, and of a provision for the refugees. The clamour likewise will scarcely be to be withstood, if some recognition if not obligation is not obtained in favour of the debts contracted before 1775 being paid in honest money. In this situation I think it is a material point to have his assistance in obtaining all that is possible on these several heads. He will share the responsibility with you, which is great, and as he is to return immediately, will be able to justify both himself and you, if you are not able to come up to the expectations of the Cabinet, and the still greater expectations without doors, which of course will be aided with every art.

If Mr. Fitzherbert can aid you, you will of course avail yourself of him in every way possible. I beg my compliments to him, and have no objection to your communicating to him this letter if you think proper.

I am very truly yours

SHELburne

R<sup>d</sup> OSWALD Esq<sup>r</sup>.

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78 No. 83.—1782, October 24: Discussion with Dr. Franklin on this date as outlined in Mr. Jay's letter to Mr. Livingston of the 17th November.

On the 24th of October I dined at Passy with Dr. Franklin, where I found M. Rayneval. After dinner we were in private with him a considerable time. He desired to know the state of our negotiation with Mr. Oswald. We told him that difficulties had arisen about our boundaries, and that one of the Minister's Secretaries (Strachey) was coming here with papers and documents on that subject. He asked us what boundaries we claimed. We told him the river St. John to the east, and ancient Canada, as described in the proclamation, to the north. He contested our right to such an extent to the north, and entered into several arguments to show our claim to be ill founded. These arguments were chiefly drawn from the ancient French claims,

and from a clause in the proclamation restraining governors from making grants in the Indian country, &c.

He inquired what we demanded as to the fisheries. We answered that we insisted on enjoying a right in common to them with Great Britain. He intimated that our views should not extend further than a coast fishery, and insinuated that pains had lately been taken in the Eastern States to excite their apprehensions and increase their demands on that head. We told him that such a right was essential to us, and that our people would not be content to make peace without it; and Dr. Franklin explained very fully their great importance to the Eastern States in particular. He then softened his manner and observed that it was natural for France to wish better to us than to England; but as the fisheries were a great nursery for seamen, we might suppose that England would be disinclined to admit others to share in it, and that for his part he wished there might be as few obstacles to a peace as possible.

No. 84.—1782, October 24: *Extract from letter, Mr. Oswald to Lord Shelburne.*

. . . . About the drying of fish, it would appear I have made a great mistake in thinking it of less importance that it really is, and therefore forbore insisting on the exceptions to it, for the reasons as mentioned in my letters. But I hope it may be rectified; and possibly a better accommodation obtained in the other articles, in which my care and best offices shall not be wanting. . . .

No. 85.—1782, October 29: *Extract from letter, Mr. Oswald to Lord Shelburne.*

PARIS 29th Octr. 1782

MY LORD Mr. Strachey arrived here yesterday at noon, and delivered me the letter your Lordship did me the honour to write me of the 23rd, for which I am much obliged to your Lordship. The objects therein mentioned are of great importance; and the alternatives proposed in your Lordship's note to Mr. Strachey are certainly very proper. Both he and I will do all we can to make the most of them. Last night we were employed on the maps and charters. This forenoon I introduced Mr. Strachey to Mr. Jay, when we ran over the several exceptions to their plan of treaty, and were joined by Mr. Adams, who is come from Holland<sup>a</sup> to take up his place in this Commission.

We then went out to Dr. Franklin when the same subjects, in the way of conversation, underwent another discussion. I cannot say with what success. Only that I think there is an appearance as that some things may be gained. To-morrow at eleven o'clock the three Commissioners have agreed to meet at my quarters, to examine maps and papers; and thereafter all to dine together at Mr. Jay's. We

<sup>a</sup> Adams reached Paris on 26th October, 1782.

are now, at night, again employed in that way, so as to be the better prepared for them, at least as well as can be done from materials of such indefinite construction. . . .

P. S. It seems to be agreed by all the Commissioners, that the Debts before the war should be paid, if the debtors are in circumstances: and that the several provinces should be liable for such of them as their assemblies have levied and taken into their Treasury.

79 No. 86.—1782, *October 31: Extract from letter, Mr. Adams to Mr. Livingston.*

PARIS, *October 31, 1782.*

SIR: Having executed the treaty of commerce at The Hague, and despatched four copies of it by four different vessels bound to America from the Texel, and having signed a sufficient number of obligations to leave in the hands of Messrs. Willinks, Van Staphorsts, and De la Lande and Fynjè, and having received information from Mr. Jay that Mr. Oswald had received a commission from the king, his master, under the great seal of Great Britain, to treat with the commissioners of the United States of America, I set off for Paris, where I arrived on Saturday, the 26th of this month, after a tedious journey, the roads being, on account of long-continued rains, in the worst condition I ever knew them.

I waited forthwith on Mr. Jay, and from him learned the state of the conferences. It is not possible at present to enter into details. All I can say is in general, that I had the utmost satisfaction in finding that he had been all along acting here upon the same principles upon which I had ventured to act in Holland, and that we were perfectly agreed in our sentiments and systems. I can not express it better than in his own words: "to be honest and grateful to our allies, but to think for ourselves." I find a construction put upon one article of our instructions by some persons which, I confess, I never put upon it myself. It is represented by some as subjecting us to the French ministry, as taking away from us all right of judging for ourselves, and obliging us to agree to whatever the French ministers should advise us to, and to do nothing without their consent. I never supposed this to be the intention of Congress; if I had, I never would have accepted the commission, and if I now thought it their intention I could not continue in it. I can not think it possible to be the design of Congress; if it is I hereby resign my place in the commission, and request that another person may be immediately appointed in my stead.

Yesterday we met Mr. Oswald at his lodgings; Mr. Jay, Dr. Franklin, and myself on one side, and Mr. Oswald, assisted by Mr. Strachey, a gentleman whom I had the honor to meet in company with Lord Howe upon Staten Island, in the year 1776, and assisted also by a Mr. Roberts, a clerk in some of the public offices, with books, maps, and papers relative to the boundaries.

I arrived in a lucky moment for the boundary of the Massachusetts, because I had brought with me all the essential documents relative to that object, which are this day to be laid before my colleagues in conference at my house, and afterwards before Mr. Oswald.



It is now apparent, at least to Mr. Jay and myself, that in order to obtain the western lands, the navigation of the Mississippi, and the fisheries, or any of them, we must act with firmness and independence, as well as prudence and delicacy. With these there is little doubt we may obtain them all.

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No. 87.—1782, October: *Conferences of M. de Rayneval with Lord Shelburne (Extracts)*, as given in *Revolutionary Diplomatic Correspondence*, Vol. V. at page 821.

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OCTOBER, 1782.

After those digressions, Lord Shelburne returned to our text. He is alarmed by the cession of Gibraltar. He does not see how they will dare to propose it to the nation. To cede Gibraltar, to liberate Dunkirk, to permit France to fortify Chandernagar, and to have a military establishment near New Foundland, to abandon Senegal, etc., all that, he says, presents a picture very alarming to an English minister. If the *uti possidetis* is proposed, I will not propose it. I will do all that is in my power to promote peace; but I can promise nothing, nor even give any hope, on the article of Gibraltar. . . .

Lord Shelburne, having begged me to call on him at half-past seven in the morning, I was there punctually. He told me that he desired to speak with me before going to the council; that since he had seen me he had received letters from the king that obliged him to ask me for some fresh explanations.

The interests of Spain have been strongly agitated. Lord Shelburne dwelt anxiously on Gibraltar; he tried to prove to me, with warmth, that the cession of it was impossible; he spoke of the resistance that that article would meet with in the council; that Lord Keppel had told him frankly, when he had mentioned it, that if they spoke of ceding Gibraltar he would take his hat and leave.

I answered that the first lord of the admiralty had only viewed it as a sailor; that a statesman ought to consider the object in question from another point of view; that, moreover, I could but respect the importance that the king of Spain attached to the possession of Gibraltar.

We then returned to the article of Holland. Lord Shelburne showed me the list of all that had been taken from that republic. He then repeated to me that Fort Trincomale (on the coast of Ceylon) suited England, and that her intention was to keep it.

Then came at last the turn of America. Lord Shelburne  
 80 foresaw that he would have much trouble with America, as much in respect to the boundaries as to the fisheries of New Foundland, but he hopes that his Christian majesty will not sustain them in this claim. I answered that I did not doubt but that he would do everything in his power to restrain the Americans within the bounds of justice and reason, and Lord Shelburne having desired to know what I thought of their pretensions, I answered that I was ignorant of those that concerned the fisheries, but that, such as they might be, it seemed to me there was a sure principle to follow in that

matter; that fishing on the high seas is *res nullius*, and that the fishing off the coasts belonged by rights to the proprietors of the coasts, except in the case of limitations founded on conventions.

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No. 88.—1782, November 2-5: *Extracts from Mr. Adams' Diary.*

November . . . . 2. Saturday . . . . Almost every moment of this week has been employed in negotiation with the English gentlemen concerning peace. We have made two propositions; one the line of forty-five degrees; the other, a line through the middle of the lakes. And for the bound between Massachusetts and Nova Scotia, a line from the mouth of Saint Croix to its source, and from its source to the Highlands.

3. Sunday. In my first conversation with Franklin, on Tuesday evening last, he told me of Mr. Oswald's demand of the payment of debts and compensation to the Tories. He said that their answer had been, that we had not power, nor had Congress. I told him I had no notion of cheating anybody. The question of paying debts, and that of compensating Tories, were two. I had made the same observation that forenoon to Mr. Oswald and Mr. Strachey, in company with Mr. Jay, at his house. I saw it struck Mr. Strachey with peculiar pleasure; I saw it instantly smiling in every line of his face; Mr. Oswald was apparently pleased with it too. In a subsequent conversation with my colleagues, I proposed to them that we should agree, that Congress should recommend it to the States to open their courts of justice for the recovery of all just debts. They gradually fell into this opinion, and we all expressed these sentiments to the English gentlemen, who were much pleased with it; and with reason, because it silences the clamors of all the British creditors against the peace, and prevents them from making common cause with the refugees.

Mr. Jay came in and spent two hours in conversation upon our affairs, and we attempted an answer to Mr. Oswald's letter. He is perfectly of my opinion, or I am of his, respecting Mr. Dana's true line of conduct, as well as his with Spain, and ours with France, Spain, and England.

. . . . Vergennes has endeavored to persuade him to treat with D'Aranda without exchanging powers; he refuses. Vergennes also pronounced Oswald's first commission sufficient, and was for making the acknowledgment of American independence the first article of the treaty. Jay would not treat; the consequence was a complete acknowledgment of our independence by Oswald's new commission under the great seal of Great Britain, to treat with the commissioners of the United States of America. Thus a temperate firmness has succeeded everywhere, but the base system nowhere. . . .

4. Monday. Called on Jay, and went to Oswald's, and spent with him and Strachey, from eleven to three, in drawing up the articles respecting debts, and tories, and fishery. I drew up the article anew in this form.

That the subjects of His Britannic Majesty, and the people of the said United States, shall continue to enjoy unmolested, the right to take fish of every kind, on all the Banks of Newfoundland, in the Gulf of Saint Lawrence, and all other places, where the inhabitants of both countries used, at any time heretofore, to

fish; and also to dry and cure their fish on the shores of Nova Scotia, Cape Sable, the Isle of Sable, and on the shores of any of the unsettled bays, harbors, or creeks of Nova Scotia and the Magdalen Islands; and His Britannic Majesty, and the said United States, will extend equal privileges and hospitality to each other's fishermen as to his own. . . .

*Mem.* All the forenoon, from eleven to three, at Mr. Oswald's, Mr. Jay and I—in the evening there again until near eleven. Strachey is as artful and insinuating a man as they could send; he pushes and presses every point as far as it can possibly go; he is the most eager, earnest, pointed spirit. . . .

5. Tuesday, Mr. Jay likes Frenchmen as little as Mr. Lee and Mr. Izard did. He says they are not a moral people; they know not what it is; he don't like any Frenchman; the Marquis de Lafayette is clever, but he is a Frenchman. Our allies don't play fair, he told me; they were endeavouring to deprive us of the fishery, the western lands, and the navigation of the Mississippi; they would even bargain with the English to deprive us of them; they want to play the western lands, Mississippi, and the whole Gulf of Mexico, into the hands of Spain.

Oswald talks of Pulteney, and a plot to divide America between France and England; France to have New England. They tell a story about Vergennes, and his agreeing that the English might propose such a division, but reserving a right to deny it all. These whispers ought not to be credited by us.

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81 No. 89.—1782, November 4: Letter, Mr. Oswald to the American Commissioners.

PARIS, November 4, 1782

GENTLEMEN: You may remember that from the very first beginning of our negotiations for settling a peace between Great Britain and America, I insisted that you should positively stipulate for the restoration of the property of all those persons under the denomination of loyalists or refugees, who have taken part with Great Britain in the present war; or if the property had been resold and passed into such variety of hands as to render the restoration impracticable (which you asserted to be the case in many instances), you should stipulate for a compensation or indemnification to those persons adequate to their losses. To these propositions you said you could not accede. Mr. Strachey, since his arrival at Paris, has most strenuously joined me in insisting upon the said restitution, compensation, or indemnification, and in laying before you every argument in favor of those demands, founded upon national honor, and upon the true principles of justice. These demands you must have understood to extend, not only to all persons of the above mentioned description, who have fled to Europe, but likewise to all those who may be now in any part of North America, dwelling under the protection of His Majesty's arms or otherwise.

We have also insisted upon a mutual stipulation for a general amnesty on both sides, comprehending thereby an enlargement of all persons who, on account of offences committed or supposed to be committed since the commencement of hostilities, may be now in confine-

ment; and for an immediate repossession of their properties, and peaceful enjoyment thereof, under the Government of the United States. To this you have not hitherto given a particular or direct answer.

It is, however, incumbent on me, as Commissioner of the King of Great Britain, to repeat those several demands, and, without going over those arguments upon paper (which we have so often urged in conversation, to press your immediate attention to these subjects, and to urge you to enter into proper stipulations for the restitution, compensation, and amnesty above mentioned, before we proceed further in this negotiation.

I have the honour to be, &c.,

RICHARD OSWALD.

No. 90.—1782, November 5: Letter, Messrs. Adams, Franklin and Jay to Mr. Oswald.

PARIS, November 5, 1782.

SIR: In answer to the letter you did us the honor to write on the 4th instant, we beg leave to repeat what we often said in conversation, viz., that the restoration of such of the estates of refugees as have been confiscated is impracticable, because they were confiscated by laws of particular States, and in many instances have passed by legal titles through several hands. Besides, sir, as this is a matter evidently appertaining to the internal polity of the separate States, the Congress, by the nature of our Constitution, have no authority to interfere with it.

As to your demand of compensation to those persons, we forbear enumerating our reasons for thinking it ill-founded. In the moment of conciliatory overtures, it would not be proper to call certain scenes into view, over which a variety of considerations should induce both parties at present to draw a veil. Permit us, therefore, only to repeat that we can not stipulate for such compensation unless on your part it be agreed to make retribution to our citizens for the heavy losses they have sustained by the unnecessary destruction of private property.

We have already agreed to an amnesty more extensive than justice required, and full as extensive as humanity could demand. We can, therefore, only repeat that it cannot be extended farther. We should be sorry if the absolute impossibility of our complying further with your propositions should induce Great Britain to continue the war for the sake of those who caused and prolonged it. But, if that should be the case, we hope that the utmost latitude will not be again given to its rigors.

Whatever may be the issue of this negotiation, be assured, sir, that we shall always acknowledge the liberal, manly, and candid manner in which you have conducted it, and that we shall remain with the warmest sentiments of esteem and regard, sir, your most obedient and very humble servants,

JOHN ADAMS,  
B. FRANKLIN,  
JOHN JAY.

No. 91.—1782, November 5: *Extract from letter, Mr. Oswald to Mr. Townshend.*

PARIS 5th Novemr 1782

SIR: As this goes by Mr. Strachey, I beg leave to refer you to him for what has passed between the American Commissioners and us since his arrival. I need only in general say that on all the  
82 material points in question he has from day to day taken up the subjects afresh, and has enforced our pretensions by every argument that reason, justice, or humanity could suggest; and even sometimes to the point of almost exciting those insinuations of menace which I had been so long accustomed to, as reported by me on sundry occasions, and to which we had nothing to oppose of reservation on our part, but an alternative which we did not think it adviseable on the present occasion to offer directly to their consideration and option.

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No. 92.—1782, November 5: *Letter, Mr. Strachey to the American Commissioners.*

PARIS, November 5, 1782.

GENTLEMEN: Knowing the expectation of the king's ministers that a full indemnity shall be provided for the whole body of refugees, either by a restitution of their property or by some stipulated compensation for their losses, and being confident, as I have repeatedly assured you, that your refusal upon this point will be the great obstacle to a conclusion and ratification of that peace, which is meant as a solid, perfect, permanent reconciliation and reunion between Great Britain and America, I am unwilling to leave Paris without once more submitting the matter to your consideration. It affects equally, in my opinion, the honor and the humanity of your country and of ours. How far you will be justified in risking every favorite object of America by contending against those principles is for you to determine. Independence and more than a reasonable possession of territory seem to be within your reach. Will you suffer them to be outweighed by the gratification of resentment against individuals? I venture to assert that such a conduct has no parallel in the history of civilized nations.

I am under the necessity of setting out by two o'clock to-day, if the time is too short for your reconsideration and final determination of this important point, I shall hope that you will enable Mr. Oswald to despatch a messenger after me who may be with me before morning at Chantilly, where I propose sleeping to-night, or who may overtake me before I arrive in London, with a satisfactory answer to this letter.

I have the honor to be, &c.,

H. STRACHEY.

No. 93.—1782, November 6: *Letter, Messrs. Adams, Franklin and Jay, to Mr. Strachey.*

PARIS, November 6, 1782.

SIR: We have been honored with your favor of the 5th instant, and as our answer to a letter we received from Mr. Oswald on the same

subject contains our unanimous sentiments respecting it, we take the liberty of referring you to the enclosed copy of that answer.

We have the honor to be, &c.,

JOHN ADAMS,  
B. FRANKLIN,  
JOHN JAY.

No. 94.—1782, November 6: *Extract from letter, Mr. Adams to Mr. Livingston.*

PARIS, November 6, 1782.

SIR: Two days ago arrived by Captain Barney the letters you did me the honor to write me on the 22d, 29th, 30th, triplicate of May, 4th of July, 29th of August, and 15th of September.

I was unconditionally received in Holland and promised upon record conferences and audiences whenever I should demand them, before I entered into any treaty, and without this I should never have entered into any; and full powers were given to the Committee of Foreign Affairs before I entered into any conferences with them. I have ventured upon the same principle in the affair of peace, and uniformly refused to come to Paris until our independence was unconditionally acknowledged by the king of Great Britain. Mr. Jay has acted on the same principle with Spain and with Great Britain. The dignity of the United States, being thus supported, has prevailed in Holland and Great Britain; not indeed as yet in Spain, but we are in a better situation in relation to her than we should have been if the principle had been departed from. . . .

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The English have sent Mr. Oswald, who is a wise and good man and if untrammelled would soon settle all, and Mr. Strachey, who is a keen and subtle one, although not deeply versed in such things, and a Mr. Roberts, who is a clerk in the board of trade, and Mr. Whitehead, who is private secretary to Mr. Oswald. These gentlemen are very profuse in their professions of national friendship, of earnest desires to obliterate the remembrance of all unkindnesses, and to restore peace, harmony, friendship, and make them perpetual by removing ever seed of future discord. All this on the part of Mr. Oswald, personally, is very sincere. On the part of the nation it may be so in some sense at present; but I have my doubts whether it is a national disposition, upon which we can have much dependence, and, still more, whether it is the sincere intention of the Earl of Shelburne.

He has been compelled to acknowledge American independence because the Rockingham administration had resolved upon it, and Carleton and Digby's letter to General Washington had made known that resolution to the world; because the nation demanded that negotiations should be opened with the American ministers, and they refused to speak or hear until their independence was acknowledged unequivocally and without conditions; because Messrs. Fox and Burke had resigned their offices, pointedly, on account of the refusal of the king and my Lord Shelburne to make such an acknowledgment; and these eloquent senators were waiting only for

the session of Parliament to attack his lordship on this point; it was, therefore, inevitable to acknowledge our independence, and no minister could have stood his ground without it. But still I doubt whether his lordship means to make a general peace. To express myself more clearly, I fully believe he intends to try another campaign, and that he will finally refuse to come to any definitive agreement with us upon articles to be inserted in the general peace.

We have gone the utmost lengths in our power to favour the negotiations. We have at last agreed to boundaries with the greatest moderation. We have offered them the choice of a line through the middle of all the great lakes, or the line of 45 degrees of latitude, the Mississippi, with a free navigation of it at one end and the river St. Croix at the other. We have agreed that the courts of justice be opened for the recovery of British debts due before the war, to a general amnesty for all the loyalists against whom there is no judgment rendered or prosecution commenced. We have agreed that all the royalists who may remain at the evacuation of the States shall have six months to sell their effects and to remove with them.

These are such immense advantages to the minister that one would think he could not refuse them. The agreement to pay British debts will silence the clamors of all the body of creditors and separate them from the tories, with whom they have hitherto made common cause. The amnesty and the term of six months will silence all the tories except those who have been condemned, banished, and confiscated; yet I do not believe they will be accepted.

I fear they will insist a little longer upon a complete indemnification to all the refugees, a point which, without express instructions from all the States, neither we nor Congress can give up; and how the States can ever agree to it I know not, as it seems an implicit concession of all the religion and morality of the war. They will also insist upon Penobscot as the eastern boundary. I am not sure that the tories and the ministry and the nation are not secretly stimulated by French emissaries to insist upon Penobscot and a full indemnification to the tories. It is easy to see that the French minister, the Spanish and the Dutch ministers would not be very fond of having it known through the world that all points for a general peace were settled between Great Britain and America before all parties are ready. It is easy to comprehend how French, Spanish, and Dutch emissaries in London, in Paris and Versailles, may insinuate that the support of the tories is a point of national and royal honor, and propagate so many popular arguments in favor of it as to embarrass the British minister. It is easy to see that the French may naturally revive their old assertions that Penobscot and Kennebec are the boundry of Nova Scotia, although against the whole stream of British authorities and the most authentic acts of the governors, Shirley, Pownall, Bernard, and Hutchinson. Mr. Fitzherbert, who is constantly at Versailles, is very sanguine for the refugees. Nevertheless, if my lord Shelburne should not agree with us these will be only ostensible points. He cares little for either. It will be to avoid giving any certain weapons against himself to the friends of Lord North and the old ministry.

The negotiations at Versailles between the Count de Vergennes and Mr. Fitzherbert are kept secret, not only from us but from the Dutch ministers, and we hear nothing about Spain. In general, I learn that

the French insist upon a great many fish. I dined yesterday with M. Berkenrode, the Dutch ambassador, and M. Brantzen, his colleague. They were both very frank and familiar, and confessed to me that nothing had been said to them, and that they could learn nothing as yet of the progress of the negociation. Berkenrode told me as an honest man that he had no faith in the sincerity of the English for peace as yet; on the contrary, he thought that a part of Lord Howe's fleet had gone to America, and that there was something meditated against the French West India Islands. I doubt this, however; but we shall soon know where my Lord Howe is. That something is meditating against the French or Spaniards, and that they think of evacuating New York for that end, I believe. Berkenrode seemed to fear the English, and said like a good man that in case any severe stroke should be struck against France it would be necessary for Holland and America to discover a firmness. This observation had my heart on its side; but without an evacuation of New York they can strike no blow at all, nor any very great one with it.

Mr. Oswald has made very striking overtures to us; to agree to the evacuation of New York; to write a letter to General Washington and another to Congress advising them to permit this evacuation, to agree that neither the people nor the army should oppose this evacuation or molest the British army in attempting it; nay, further, that we should agree that the Americans should afford them all sorts of aid, and even supplies of provisions. These propositions he made to us in obedience to an instruction from the minister, and he told us their army were going against West Florida to re-conquer that from the Spaniards. Our answer was that we could agree to no such things; that General Washington could enter into a convention with them for the terms upon which they should surrender the city of New York and all its dependencies, as Long Island, Staten Island, &c., to the arms of the United States. All that we could agree to was that the effects and persons of those who should stay behind  
84 should have six months to go off, nor could we agree to this unless as an article to be inserted in the general peace.

I have the honor to be, &c.,

JOHN ADAMS.

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No. 95.—1782, November 8: *Extract from letter, Mr. Adams to Mr. Dana.*

PARIS, November 8, 1782.

DEAR SIR: The King of Great Britain, by patent, under the great seal of his kingdom, has created Richard Oswald, esq., to be his minister plenipotentiary to treat with the ministers of the United States of America. Thus Great Britain is the third power in Europe to acknowledge our independence. She can no longer, therefore, contend that it is a breach of the armed neutrality, or an hostility against her, to acknowledge American independence. This is so essential a change in the state of things, that I think, and Mr. Jay thinks, you will now have a reasonable ground to expect success. . . .



No. 96.—1782, November 3: Letter, Mr. Strachey (from Calais en route to London) to Mr. Townshend, with enclosures.

CALAIS 8th November 1782

SIR The moment I arrive at Dover, I shall dispatch a messenger, with the enclosed new terms of Treaty, as a paper which you will be most anxious to see. It is accompanied with a map, upon which are drawn the boundary line originally sent to you by Mr. Oswald, and two other lines proposed by the American Commissioners after my arrival at Paris. Either of these you are to choose. They are both better than the original line, as well in respect to Canada, as to Nova Scotia, though neither of them equal to your hopes. The boundaries, according to the first proposed of these two new lines, are described in an enclosed Paper No. 2. Those, according to the second proposed, are described in the treaty, merely because they are contained in a lesser compass of writing.

It is unnecessary at present to trouble you with the arguments urged by us, to enlarge the circle of Canada, and to extend Nova Scotia to Kennebeck, or even to Penobscot. The limitation of this Province to the River St. Croix (which is the boundary by the King's Commission to the Governor) being inadmissible under the instructions Lord Shelburne gave me, could not be acquiesced in; and the American Commissioners would not recede from their extension of the Massachusetts to that river: nor would they agree to the appointment of Commissaries, unless it were to settle where the River St. Croix really is; for it is not laid down in the same place in all the maps.

No. 3 is what I contended for, as the proper article concerning the fishery, which I take to be precisely consonant with your intention. After a little dispute, they gave up the point of drying fish on Newfoundland; but they insisted upon a right to fish in the Gulf of St. Lawrence, and in all other places, where they and we used formerly to fish; and also to dry on the shores of the Isle of Sables, Cape Sables, the Magdalene Islands (which are said to be uninhabited), and on the shores of any unsettled bay in Nova Scotia. Mr. Oswald is satisfied with the article so expressed, and I enclose (No. 4) his observations upon the subject.

The recovery of the property of the refugees, and of the debts due to British subjects, before, and since the war, are points which have been obstinately fought for. You will see by the treaty all that could be obtained. The debts prior to 1775, appear to be safe. Those, since that period, were alledged to have been illegal, and therefore not recoverable, but under the honour of those who contracted them.

With regard to the refugees, you will observe that something is done in favor of those now under the protection of the British army. But with regard to all others of that description, I see nothing for them, except what you have in Canada and the little piece now added to Nova Scotia, between the original Boundary sent to you by Mr. Oswald, and that now obtained. The written remonstrance, by a letter from Mr. Oswald to the American Commissioners (No. 5) was made, in the view of having an authentic proof that every effort had been used, agreeably to my Instructions from Lord Shelburne,

upon a point wherein the national honor is so deeply concerned. No. 6 is the rough draft of a letter which I also wrote upon the same subject. Neither of these letters had been answered when I left Paris. But Mr. Oswald had seen the intended answer to his letter, which was, that the refugees should have compensation, provided Great Britain would compensate for all the towns, houses, barns &c., destroyed during the war.

Upon the return of a messenger to Paris, with your definitive answer if not very repugnant to the terms now sent, the American Commissioners will, I doubt not, immediately sign the treaty, so that you may have it in London before the meeting of Parliament.

They would not stipulate for the quiet evacuation of New York, on account of their treaty with France, which provides that America shall not make a separate peace or truce; and they pretend to fear that their writing upon such a point, would be construed into a proposition for a truce. But they express themselves to be confident, that Washington, upon sight of this provisional treaty, signed by them, will not obstruct the evacuation.

I have the honor &c

H. STRACHEY.

R<sup>t</sup> Hon<sup>ble</sup> THO<sup>s</sup> TOWNSHEND

&c &c &c.

*Enclosure No. 1: New Terms of Treaty, 5 November.*

ARTICLES agreed upon by and between Richard Oswald, Esq., the Commissioner of His Britannic Majesty for treating of peace with the Commissioners of the United States of America, on behalf of His said Majesty on the one part; and Benjamin Franklin, John Jay, and John Adams, three of the Commissioners of the said States, for treating of peace with the Commissioners of his said Majesty, on their behalf on the other part. To be inserted in, and to constitute the treaty of peace proposed to be concluded between the Crown of Great Britain and the said United States, but which treaty is not to be concluded until his Britannic Majesty shall have agreed to the terms of a peace between France and Britain, proposed or accepted of by His Most Christian Majesty, and shall be ready to conclude with him such treaty accordingly; (it being the duty and intention of the United States not to desert their Ally), but faithfully and in all things, to abide by and fulfil their engagements with His Most Christian Majesty.

Whereas reciprocal advantages and mutual convenience are found by experience to form the only permanent foundation of peace and friendship between States, it is agreed to form the articles of the proposed treaty on such principles of liberal equality and reciprocity as that partial advantages (those seeds of discord) being excluded, such a beneficial and satisfactory intercourse between the two countries may be established as to promise, and secure to both perpetual peace and harmony.

His Britannic Majesty acknowledges the said United States, viz.: New Hampshire, Massachusetts Bay, Rhode Island, and Providence Plantations, Connecticut, New York, New Jersey, Pennsylvania, Delaware, Maryland, Virginia, North Carolina, South Carolina, and

Georgia, to be free sovereign and independent States; that he treats with them as such, and for himself, his heirs, and successors, relinquishes all claims to the government, propriety and territorial rights of the same, and every part thereof; and that all disputes which might arise in future on the subject of the boundaries of the said United States may be prevented, it is hereby agreed and declared that the following are, and shall be their boundaries, viz. :—

From the north-west angle of Nova Scotia being that angle which is formed by a line drawn due north, from the source of St. Croix River, to the High lands which divide the rivers that empty themselves into the River St. Lawrence, from those which fall into the Atlantic Ocean, and along the said High lands, to the north-western head of Connecticut River, thence down along the middle of that river to the Fifth degree of north latitude, following the said latitudes until it strikes the River Mississippi. Thence by a line to be drawn along the middle of the said River Mississippi until it shall intersect the northernmost part of the Thirty first degree of latitude north of the equator, South, by a line to be drawn due east from the determination of the line last mentioned in the latitude of Thirty one Degrees, to the middle of the River Apalachicola or Catahouchi; thence along the middle thereof to its junction with the Flint River, thence straight to the head of St. Mary's River; and thence down along the middle of St. Mary's River to the Atlantic Ocean. East, by a line from the mouth of said St. Mary's River, to the mouth of the River St. Croix in the Bay of Fundy, and by a line drawn through the middle of said river to its source; and from its source directly north to the aforesaid High lands which divide the rivers that fall into the Atlantic Ocean, from those which empty themselves into the River St. Lawrence, comprehending all islands within Twenty leagues of any part of the shores of the United States, and lying between lines to be drawn due east from the points where the aforesaid boundaries of St. Croix River, and St. Mary's River, shall respectively touch the Bay of Fundy, and the Atlantic Ocean; excepting always such islands as now are, or heretofore have belonged to the Colony of Nova Scotia, or have been within the limits thereof. Upon a farther consideration of the just limits and boundaries of the Province of West Florida, it is agreed that its northern boundary shall extend from the said Thirty first degree of latitude to a line to be drawn due east from the place where the River Yassous fall into the River Mississippi, and along the said line due east to the River Apalachicola.

It is agreed that all such loyalists or refugees, as well as all such British merchants, or other subjects, as may be resident in any of the United States at the time of the evacuation thereof by the arms and garrisons of His Britannic Majesty, shall be allowed six months thereafter to remove to any part of the world, and also at their election to dispose of within the said term, or to carry with them their goods and effects. And it is understood that the said States shall extend such farther favour to the said merchants, and such amnesty and clemency to the said refugees, as their respective circumstances and the dictates of justice and humanity may render just and reasonable; and particularly that amnesty and indemnity

by Acts, judgments, or prosecutions actually passed or commenced a month previous to such evacuation.

That the subjects of His Britannic Majesty and the people of the said United States shall continue to enjoy unmolested the right to take fish of every kind, on all the banks of Newfoundland; also in the Gulf of St. Lawrence, and all other places where the inhabitants of both countries used at any time heretofore to fish; and also to dry and cure their fish on the shores of the Isle of Sables, Cape Sables, and the shores of any of the unsettled bays, harbours, or creeks of Nova Scotia and of the Magdalene Islands. And His Britannic Majesty and the said United States will extend equal privileges and hospitality to each other's fishermen, as to their own.

Whereas certain of the United States, excited thereto by the unnecessary destruction of private property, have confiscated all debts due from their citizens to British subjects, and also in certain instances lands belonging to the latter; And whereas it is just that private contracts made between individuals of the two countries before the war, should be faithfully executed; and as the confiscation of the said lands may have a latitude not justifiable by the law of nations: It is agreed that British creditors shall, notwithstanding, meet with no lawful impediment to recovering the full value or sterling amount of such *bonâ fide* debts as were contracted before the year 1775. And also that Congress will recommend to the said States so to correct (if necessary) their said Acts respecting the confiscation of lands in America, belonging to real British subjects as to render the said Acts consistent with perfect justice and equity.

As to the cession made of certain lands in Georgia by a number of Indians there on the 1st June, 1773, for the purpose of paying the debts due from them to a number of traders, the American Commissioners say that the State of Georgia is alone competent to consider and decide on the same; for that, it being a matter of internal policy, with which neither Congress nor their Commissioners are authorised to interfere, it must of necessity be referred to the discretion and justice of that State, who without doubt will be disposed to do, what may be just and reasonable on the subject.

Similar reasons and considerations constrain the Commissioners to give the like answer to the case of Mr. Penn's family.

From and immediately after the conclusion of the proposed Treaty there shall be a firm and perpetual peace between His Britannic Majesty and the said States, and between the subjects of the one and the citizens of the other. Wherefore all hostilities, both by sea and land, shall then immediately cease: all prisoners on both sides shall be set at liberty, and His Britannic Majesty shall forthwith and without causing any destruction withdraw all his armies, garrisons, and fleets from the said United States, and from every port, place, and harbour within the same; leaving in all fortifications the American artillery that may be therein; and shall also order and cause all archives, records, deeds, and papers belonging to any of the said States or their citizens, which in the course of the war may have fallen into the hands of his officers to be forthwith restored and delivered to the proper States and persons to whom they belong.

That the navigation of the River Mississippi from its source to the ocean shall for ever remain free and open.

*Separate Article to be added at the end of the Treaty.*

It is hereby understood and agreed, that in case Great Britain, at the conclusion of the present war, shall recover or be put in possession of West Florida, the line of North boundary between the said province and the United States, shall be a line drawn from the mouth of the River Yassons where it unites with the Mississippi, due east to the River Apalachicola.

*Enclosure No. 2: Alternative Boundary: First Proposition.*

From the north-west angle of Nova Scotia, viz., that angle which is formed by a line drawn due north from the source of St. Croix River to the High lands, along the said High lands which divide those rivers that empty themselves into the River St. Lawrence from those which fall into the Atlantic Ocean to the north-westernmost head of Connecticut River; thence down along the middle of that river to the 45th degree of north latitude, from thence by a line due west on said latitude, until it strikes the River Iroquois or Cataraquy, thence along the middle of said river into Lake Ontario, through the middle of said lake, until it strikes the communication by water between that lake and Lake Erie, thence along the middle of said communication into Lake Erie through the middle of said lake, until it arrives at the water communication between that lake and Lake Huron, thence along the middle of said water communication into Lake Huron, thence through the middle of said lake to the water communication between that lake and Lake Superior, thence through Lake Superior northward of the Isles Royal and Philipeaux to the Long Lake, thence through the middle of said Long Lake and the water communication between it and the Lake of the Woods to the said Lake of the Woods, thence through the said lake to the most northwestern point thereof, and from thence on a due western course to the River Mississippi, thence by a line to be drawn along the middle of the said River Mississippi until it shall intersect the northernmost part of the 31st degree of north latitude; south by a line to be drawn due east from the determination of the line last mentioned in the latitude of 31 degrees north of the Equator, to the middle of the River Apalachicola or Catahouche, thence along the middle thereof to its junction with the Flint River, thence straight to  
 87 the head of St. Mary's River, and thence down along the middle of St. Mary's River to the Atlantic Ocean; east by a line to be drawn along the middle of the River St. Croix from its mouth in the Bay of Fundy to its source, and from its source directly north to the aforesaid High lands which divide the rivers that fall into the Atlantic Ocean from those which fall into the River St. Lawrence; comprehending all islands within 20 leagues of any part of the shores of the United States, and lying between lines to be drawn due east from the points where the aforesaid boundaries between Nova Scotia on the one part and East Florida on the other shall respectively touch the Bay of Fundy and the Atlantic Ocean, excepting such islands as now are or heretofore have been within the limits of the said province of Nova Scotia.

*Enclosure No. 3: Newfoundland Fishery: Mr. Strachey's proposal.*

That the people of the said United States shall continue to enjoy unmolested the right of fishing on the Banks of Newfoundland, in the manner they have hitherto used without anchorage, but by drift.

*Enclosure No. 4: Mr. Oswald's Observations respecting the Article of the Fishery.*

Since Mr. Adams came here the Commissioners have taken more notice of the refusal of admitting their having the privilege of drying in Newfoundland than I expected from what they told me at settling the plan of Treaty which was sent to England. But at last, after a great deal of conversation at different times on that subject, it was agreed to be left out upon condition of their being allowed to dry upon any of the unsettled parts of the coast of Nova Scotia, when they happened to be so far from home as that their fish might run some risk of being spoilt before they reached their own shores.

Dr. Franklin said he believed it would be only on such occasions that they would use that privilege, and even then, it would be only for a partial drying and salting, so as to prevent the fish spoiling before they went home and delivered them to their wives and children to complete and finish the drying.

He also said: "I observe as to *catching fish* you mention only the banks of Newfoundland. Why not all other places, and amongst others, the Gulf of St. Lawrence? Are you afraid there is not fish enough, or that we should catch too many; at the same time that you know that we shall bring the greatest part of the money we get for that fish to Great Britain to pay for your manufactures?" He agreed it might be proper not to have a mixture of their people with ours for drying on Newfoundland, but supposed there would be no inconvenience in throwing on shore their fish for a few days on an unsettled beach, bay, or harbour on *the coast of Nova Scotia*.

I am sorry that I should have given occasion to so much trouble on this head by trusting to what was said by the Commissioners, as not being so positive in the matter, but what they would give up the point, if objected to at home, and have now only to submit it to consideration. Whether it will not be proper to allow of a drying in Nova Scotia and also to let the clause regarding the catching of fish be so expressed as not to appear as if we were afraid of the Americans extending that branch of commerce as far as they incline to pursue it. Since I really believe they will not like it, and that it will not be an easy matter to restrain them if we should incline to do so.

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No. 97.—1782, November 17: *Extract from letter, Mr. Jay to Mr. Livingston.*

PARIS, November 17, 1782.

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On the 25th of July, 1782, the King of Great Britain issued a warrant [In the original the warrant is here given in full] \* or order directed to his attorney, or solicitor-general.

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\* As printed in Rev. Dip. Corr., vol. vi, p. 14.

A copy of this warrant was sent by express to Mr. Oswald, with an assurance that the commission should be completed and sent him in a few days. He communicated this paper to Dr. Franklin, who, after showing it to me, sent it to the Count de Vergennes. The Count wrote to the Doctor the following letter on the subject:

[Translation.]

I have received, sir, the letter of to-day with which you have honored me, and the copy of the powers, which Mr. Oswald communicated to you. The form in which it is conceived, not being that which is usual, I can not form my opinion on the first view of it. I am going to examine it with the greatest attention, and, if you will be pleased to come here on Saturday morning, I shall be able to confer about it with you and Mr. Jay, if it should be convenient for him to accompany you.

I have the honor to be, &c.,

DE VERGENNES.

VERSAILLES, *August 8, 1782.*

88 On the 10th of August we waited upon the Count de Vergennes, and a conference between him and us, on the subject of Mr. Oswald's commission, ensued.

The Count declared his opinion that we might proceed to treat with Mr. Oswald under it as soon as the original should arrive. He said it was such a one as we might have expected it would be, but that we must take care to insert proper articles in the treaty to secure our independence and our limits against all future claims.

I observed to the Count that it would be descending from the ground of independence to treat under the description of colonies. He replied that names signified little; that the King of Great Britain's styling himself the King of France was no obstacle to the King of France's treating with him; that an acknowledgment of our independence, instead of preceding, must in the natural course of things be the effect of the treaty, and that it would not be reasonable to expect the effect before the cause. He added that we must be mindful to exchange powers with Mr. Oswald, for that his acceptance of our powers, in which we were styled commissioners from the United States of America would be a tacit admittance of our independence. I made but little reply to all this singular reasoning. The Count turned to Dr. Franklin and asked him what he thought of the matter. The Doctor said he believed the commission would do. He next asked my opinion. I told him that I did not like it, and that it was best to proceed cautiously.

On returning I could not forbear observing to Dr. Franklin that it was evident the Count did not wish to see our independence acknowledged by Britain until they had made all their uses of us. It was easy for them to foresee difficulties in bringing Spain into a peace on moderate terms, and that if we once found ourselves standing on our own legs, our independence acknowledged, and all our other terms ready to be granted, we might not think it our duty to continue in the war for the attainment of Spanish objects. But on the contrary, as we were bound by treaty to continue the war till our independence should be attained it was the interest of France to postpone that event until their own views and those of Spain could be

gratified by a peace, and that I could not otherwise account for the minister's advising us to act in a manner inconsistent with our dignity, and for reasons which he himself had too much understanding not to see the fallacy of.

The Doctor imputed this conduct to the moderation of the minister, and to his desire of removing every obstacle to speedy negotiations for peace. He observed that this court had hitherto treated us very fairly and that suspicions to their disadvantage should not be readily entertained. He also mentioned our instructions as further reasons for our acquiescence in the advice and opinion of the minister. A day or two afterwards I paid a visit to Mr. Oswald, and had a long conversation with him respecting his commission. On the resignation of Mr. Fox, many reports to the prejudice of Lord Shelburne's sincerity on the subject of American independence had spread through France as well as through Great Britain. His lordship, fearful of their effect on the confidence with which he wished to inspire the American commissioners, conveyed by Mr. Benjamin Vaughan to Dr. Franklin an extract of certain instructions to Sir Guy Carleton, of which the following is a copy, viz.:—

\* \* \* \* \*

In the course of the before mentioned conversation with Mr. Oswald, I reminded him that the judgment and opinion of America respecting the disposition and views of Britain towards her, must be determined by facts and not by professions. That the enabling act and the commission granted to him in pursuance of it, by no means harmonized with the language of these instructions to Sir Guy Carleton. That unless the offers and promises contained in the latter were realized by an immediate declaration of our independence, America would naturally consider them as specious appearances of magnanimity calculated to deceive and disunite them, and instead of conciliating, would tend to irritate the States. I also urged in the strongest terms the great impropriety and consequently the utter impossibility of our ever treating with Great Britain on any other than an equal footing, and told him plainly that I would have no concern in any negotiation in which we were not considered as an independent people.

Mr. Oswald upon this, as upon every other occasion, behaved in a candid and proper manner. He saw and confessed the propriety of these remarks; he wished his commission had been otherwise, but was at a loss how to reconcile it to the king's dignity, to make *such* a declaration immediately after having issued *such* a commission. I pointed out the manner in which I conceived it might be done; he liked the thought and desired me to reduce it to writing. I did so, and communicated it to Dr. Franklin, and as we corrected it, is as follows, viz.:—

George III, &c., to Richard Oswald, greeting. Whereas by a certain act, &c., (here follows the enabling act).

And whereas, in pursuance of the true intent and meaning of the said act, and to remove all doubts and jealousies, which might otherwise retard the execution of the same, we did, on the                    day of                    instruct Sir Guy Carleton, &c., our general, &c., to make known to the people of the said Colonies in Congress assembled, our royal disposition and intention to recognise the said

<sup>a</sup> See No. 33, *supra*, p. 42.



Colonies as independent States, and as such, to enter with them into such a treaty of peace as might be honourable and convenient to both countries.

And whereas, further, in pursuance of the said act, we did on the       day of       authorise and commission you, the said Richard Oswald (here follows the commission). Now, therefore, to the end that a period may be put to the calamities of war, and peace, commerce, and mutual intercourse the more speedily restored, we do hereby, in pursuance of our royal word, for ourselves and our successors, recognise the said thirteen Colonies as free and independent States. And it is our will and pleasure that you do forthwith proceed to treat with the commissioner or commissioners already appointed, or to be appointed for that purpose by the Congress of the said States, and with him or them only, of and concerning the objects of your said commission, which we do hereby confirm, and that this declaration be considered by you as a preliminary article to the proposed treaty, and be in substance or in the whole inserted therein or incorporated therewith. And it is our further will and pleasure that on receiving these presents which we have caused to be made patent, and our great seal to be hereunto affixed, you do deliver the same to the said commissioner or commissioners, to be by him or them transmitted to the Congress of the United States of America as an earnest of the friendship and goodwill which we are disposed to extend to them. Witness, &c., 15th of August 1782.

Mr. Oswald approved of the draft and said he would recommend the measure to the minister. The next day, however, he told me that he had an instruction, which he thought enabled him to make the declaration, but that it would be necessary to obtain the previous consent of the minister for that purpose. He then read to me the fourth article of his instructions, of which the following is a copy, viz.:—

In case you find the American commissioners are not at liberty to treat on any terms short of independence, you are to declare to them that you have our authority to make that cession; our ardent wish for peace disposing us to purchase it at the price of acceding to the complete independence of the thirteen Colonies.

He said he would immediately dispatch a courier to London, and would press the ministry for permission to acknowledge our independence without further delay, which he accordingly did.

At this time, the commission, under the great seal, had arrived, and Dr. Franklin and myself went to Versailles to communicate that circumstance to the Count de Vergennes, and (agreeably to our instructions) to inform him of what had passed between Mr. Oswald and us.

The Count and myself again discussed the propriety of insisting that our independence should be acknowledged previous to a treaty. He repeated that it was expecting the effect before the cause, and many other similar remarks, which did not appear to me to be well founded. I told the Count that a declaration of our independence was, in my opinion, a matter of very little consequence; that I did not consider our independence as requiring any aid or validity from British acts; and provided that nation treated us as she treated other nations, viz., on a footing of equality, it was all that I desired. He differed with me also in this opinion. He thought an explicit acknowledgment of our independence in treaty very necessary, in order to prevent our being exposed to further claims. I told him we should always have arms in our hands to answer those claims; that I considered mere paper fortifications as of but little consequence; and that we should take care to insert an article in the treaty whereby the King of Great Britain should renounce all claims of every kind to the countries within our limits.

The Count informed us he had delayed doing business with Mr. Fitzherbert until we should be ready to proceed with Mr. Oswald, and that he expected to see him the next day or the day after.

Mr. Fitzherbert went the next day to Versailles, and immediately dispatched a courier to London.

The answer of the British ministry to Mr. Oswald is contained in the following extract of a letter to him from Mr. Townshend, dated Whitehall, September 1, 1782:—

SIR,—I have received and laid before the King your letters of the 17th, 18th, and 21st ultimo, and I am commanded to signify to you his majesty's approbation of your conduct in communicating to the American commissioners the fourth article of your instructions, which could not but convince them that the negotiation for peace and the cession of independence to the thirteen United Colonies were intended to be carried on and concluded with the commissioners in Europe.

Those gentlemen having expressed their satisfaction concerning that article, it is hoped that they will not entertain a doubt of his majesty's determination to exercise in the fullest extent the powers with which the act of Parliament has invested him, by granting to America full, complete, and unconditional independence in the most explicit manner, as an article of treaty.

When Mr. Oswald communicated this letter to me I did not hesitate to tell him that his court was misled by this, for that the language of Mr. Townshend corresponded so exactly with that of the Count de Vergennes, and was at the same time so contrary to that of the instructions to Sir Guy Carlton, as to be inexplicable on any other principle. I also told him I suspected that the courier despatched by Mr. Fitzherbert on his return from Versailles had been the means of infusing these ideas. He smiled, and after a little pause said, why, Count de Vergennes told Mr. Fitzherbert that my commission was come, and that he thought it would do, and therefore they might now go on, and accordingly they did go on to discuss certain points, and particularly that of Newfoundland.

Mr. Oswald did not deny or contradict the inference I drew from this, viz., that Mr. Fitzherbert, struck by this conduct of Count de Vergennes, and finding that the commission given to Mr. Oswald was deemed sufficient by him, thought it his duty directly to inform his court of it, and thereby prevent their being embarrassed by our scruples and demands on a point on which there was so much reason to think that our allies were very moderate.

For my own part I was not only persuaded that this was the case, but also that the ill-success of Mr. Oswald's application was owing to it.

These considerations induced me to explain to him what I supposed to be the natural policy of this court on the subject, and to show him that it was the interest of Britain to render us an independent on France as we were resolved to be on her. He soon adopted the same opinion, but was at a loss to see in what manner Great Britain, considering what had just passed, could consistently take further steps at present. I told him that nothing was more easy, for  
 90     that the issuing of another commission would do it. He asked  
        me if he might write that to the Ministry; I told him he  
        might; he then desired, in order to avoid mistakes, that I would  
        give it to him in writing, which I did as follows, viz.:—

A commission (in the usual form) to Richard Oswald to treat of peace or truce with commissioners, vested with equal powers by and on the part of the

United States of America, would remove the objections to which his present one is liable, and render it proper for the American commissioners to proceed to treat with him on the subject of preliminaries.

I then reminded him of the several resolutions of Congress, passed at different periods, not to treat with British commissioners on any other footing than that of absolute independence, and also intimated that I thought it would be best to give him our final and decided determination not to treat otherwise in writing in the form of a letter. He preferred this to a verbal answer, and the next day I prepared the following draft of such a letter:—

SIR:—It is with regret that we find ourselves obliged, by our duty to our country, to object to entering with you into negotiations for peace on the plan proposed. One nation can treat with another nation only on terms of equality; and it can not be expected that we should be the first and only servants of Congress who would admit doubts of their independence.

The tenor of your commission affords matter for a variety of objections, which your good sense will save us the pain of enumerating. The journals of Congress present to you unequivocal and uniform evidence of the sentiments and resolutions of Congress on the subject, and their positive instructions to us to speak the same language.

The manner of removing these obstacles is obvious, and in our opinion no less consistent with the dignity than the interest of Great Britain. If the Parliament meant to enable the king to conclude a peace with us on terms of independence, they necessarily meant to enable him to do it in a manner compatible with his dignity; and consequently that he should previously regard us in a point of view that would render it proper for him to negotiate with us. What this point of view is you need not be informed.

We also take the liberty of submitting to your consideration how far his majesty's now declining to take this step would comport with the assurances lately given on that subject, and whether hesitation and delay would not tend to lessen the confidence which those assurances were calculated to inspire.

As to referring an acknowledgment of our independence to the first article of a treaty, permit us to remark that this implies that we are not to be considered in that light until after the conclusion of the treaty, and our acquiescing would be to admit the propriety of our being considered in another light during that interval. Had this circumstance been attended to we presume that the court of Great Britain would not have pressed a measure which certainly is not delicate, and which cannot be reconciled with the received ideas of national honor.

You may rest assured, sir, of our disposition to peace on reasonable terms, and of our readiness to enter seriously into negotiations for it, as soon as we shall have an opportunity of doing it in the only manner in which it is possible for one nation to treat with another, viz., on an equal footing.

Had you been commissioned in the usual manner we might have proceeded; and as we can perceive no legal or other objection to this, or some other such like expedient, it is to be wished that his majesty will not permit an obstacle so very unimportant to Great Britain, but so essential and insuperable with respect to us, to delay the re-establishment of peace especially, and in case the business could be but once begun the confidence we have in your candor and integrity would probably render the settling all our articles only the work of a few hours.

We are, &c.

I submitted this draft to Dr. Franklin's consideration. He thought it rather too positive, and therefore rather imprudent, for that in case Britain should remain firm, and future circumstances should compel us to submit to their mode of treating, we should do it with an ill grace after such a decided and preemptory refusal. Besides, the Doctor seemed to be much perplexed and fettered by our instructions to be guided by the advice of this court. Neither of these considerations had weight with me; for as to the first, I could not conceive of any event which would render it proper, and there-

fore possible, for America to treat in any other character than that of an independent nation; and as to the second, I could not believe that Congress intended we should follow any advice which might be repugnant to their dignity and interest.

On returning to town Mr. Oswald spoke to me about this letter. I told him that I had prepared a draft of one, but that, on further consideration and consulting with Dr. Franklin, we thought it best not to take the liberty of troubling his court with any arguments or reasonings, which without our aid must be very evident to them.

He appeared disappointed, and desired me to let him see the draft. I did. He liked it; he requested a copy of it, but as I doubted the propriety of such a step, I told him I would consider of it, and give him an answer the next day.

It appeared to me on further reflection that no bad consequences would arise from giving him a copy of this paper; that though unsigned it would nevertheless convey to the ministry the sentiments and opinions I wished to impress, and that, if finally they should not be content to treat with us as independent, they were not yet ripe for peace or treaty with us; besides, I could not be persuaded that Great Britain, after what the House of Commons had declared, after what Mr. Greville had said, and Sir Guy Carlton been instructed to do, would persist in refusing to admit our independence, provided they really believed that we had firmly resolved not to treat on more humble terms.

I gave him a copy, and also copies of the various resolutions of Congress which evince their adherence to their independence. These papers he sent by express to London, and warmly recommended the issuing a new commission to remove all further delay. This matter was not communicated to the Count de Vergennes, at least to my knowledge or belief, by either of us.

91 I might now enumerate the various expedients proposed by the Count de Vergennes and the Marquis de la Fayette to reconcile our difficulties, such as Mr. Oswald's writing a letter to us, signifying that he treated with us as independent, &c., &c.; but, as our independence was indivisible, there could not easily be contrived a half-way mode of acknowledging it, and therefore any method of doing it short of the true and proper one could not bear examination.

Being convinced that the objections to our following the advice of the Count de Vergennes were unanswerable, I proposed to Dr. Franklin that we should state them in a letter to him, and request his answer in writing, because, as we were instructed to ask and to follow his advice on these occasions, we ought always to be able to show what his advice was.

The Doctor approved of the measure, and I undertook to prepare a draft of such a letter.

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[After referring to his negotiations with Spain, and a memoir which he had received from M. de Rayneval containing, as Mr. Jay understood, the sentiments of the French Foreign Minister, Mr. Jay proceeded as follows:—]

I did not return M. Rayneval any answer to his letter, nor any remarks on his memoir, but the first time I saw him afterwards I told him I had received his letter and memoir he had done me the honour

to write, and that I should send a copy of it to our Secretary for Foreign Affairs.

As both the letter and memoir were *ostensibly* written by him in a private character, it did not appear to me expedient or necessary to enter into any formal discussions with him on those subjects.

The perusal of this memoir convinced me—

1st. That this court would, at a peace, oppose our extension to the Mississippi.

2dly. That they would oppose our claim to the free navigation of that river.

3dly. That they would *probably* support the *British* claims to all the country above the thirty-first degree of latitude, and *certainly* to all the country north of the Ohio.

4thly. That in case we should not agree to divide with Spain in the manner proposed, that then this court would aid Spain in negotiating with Britain for the territory she wanted, and would agree that the residue should remain to Britain.

In my opinion, it was not to be believed that the first and confidential secretary of the Count de Vergennes would without his knowledge and consent declare such sentiments and offer such propositions, and that, too, in writing. I therefore considered M. Rayneval as speaking the sentiments of the minister, and I confess they alarmed me, especially as they seemed naturally to make a part of that system of policy which I believed induced him rather to postpone the acknowledgment of our independence by Britain to the conclusion of a general peace than aid us in procuring it at present.

You will now be pleased to recollect the postscript to M. Rayneval's letter.

On the 9th of September I received certain information that on the 7th M. Rayneval had left Versailles and was gone to England; that it was pretended he was gone into the country, and that several precautions had been taken to keep his real destination a secret.

A former page in this letter informs you that a little before this Mr. Oswald had despatched a courier with letters recommending it to his court to issue a new commission styling us *United States*, and that I had agreed to prepare a letter to the Count de Vergennes, stating our objections to treat with Mr. Oswald under his present one.

This, therefore, was a period of uncertainty and suspense, and whatever part Britain might take must necessarily be followed by very important consequences. No time was, therefore, to be lost in counteracting what I supposed to be the object of M. Rayneval's journey. But before I enter into that detail I must here insert a copy of the letter which I wrote to the Count d'Aranda, agreeably to his request hereinbefore mentioned.

*To the Count d'Aranda.*

PARIS, September 10, 1782.

SIR: Agreeably to your excellency's request, I have now the honor of repeating in writing that I am not authorised by Congress to make any cession of any counties belonging to the United States, and that I can do nothing more respecting the line mentioned by your excellency than to wait for and to follow such instructions as Congress, on receiving that information, may think proper to give me on that subject.

Permit me, nevertheless, to remind your excellency that I have full power to confer, treat, agree, and conclude with the ambassador or plenipotentiary of

his Catholic majesty, *vested with equal powers*, of and concerning a treaty of amity and commerce and of alliance, on principles of equality, reciprocity, and mutual advantage.

I can only regret that my overtures to his excellency the Count de Florida Blanca, who was *ex officio* authorised to confer with me on such subjects, have been fruitless.

It would give me pleasure to see this business begun, and I cannot omit this opportunity of assuring your excellency of my wish and desire to enter upon it as soon as your excellency shall be pleased to inform me that you are authorised, and find it convenient to proceed.

I have the honor to be, &c.,

JOHN JAY.

To this letter the Count returned the following answer:

*Count d'Aranda to John Jay.*

[Translation.]

SIR: I have the honor to reply to your note of yesterday that I am furnished with ample instructions from my court, and am authorised by it to confer and treat with you on all points on which you may be instructed and authorised to treat by your constituents.

92 As soon as you communicate your propositions they will be examined, and I will submit to you my observations on them, in order that we may be able to agree on both sides.

I have the honor to be, &c.,

THE COUNT D'ARANDA.

On the same day, viz., the 10th of September, a copy of a translation of a letter from M. Marbois to the Count de Vergennes, against our sharing in the fishery, was put into my hands. Copies of it were transmitted to you, enclosed with my letter of the 18th of September, of which a duplicate was also forwarded.

I also learned from good authority that on the morning of M. Rayneval's departure the Count d'Aranda had, contrary to his usual practice, gone with *post horses* to Versailles, and was two or three hours in conference with the Count de Vergennes and M. Rayneval before the latter set out.

All these facts taken together led me to conjecture that M. Rayneval was sent to England for the following purposes:

1st. To let Lord Shelburne know that the demands of America to be treated by Britain as independent previous to a treaty were not approved or countenanced by this court, and that the offer of Britain to make that acknowledgment in an article of the proposed treaty was in the Count's opinion sufficient.

2dly. To sound Lord Shelburne on the subject of the fishery, and to discover whether Britain would agree to divide it with France to the exclusion of all others.

3dly. To impress Lord Shelburne with the determination of Spain to possess the exclusive navigation of the Gulf of Mexico, and of their desire to keep us from the Mississippi; and also to hint the propriety of such a line as on the one hand would satisfy Spain and on the other leave to Britain all the country north of the Ohio.

4thly. To make such other verbal overtures to Lord Shelburne as it might not be advisable to reduce to writing, and to judge, from the general tenor of his lordship's answers and conversation whether it was probable that a general peace, on terms agreeable to France, could be effected in order that, if that was not the case, an immediate stop might be put to the negotiation.

Having, after much consideration, become persuaded that these were M. Rayneval's objects, I mentioned his journey to Mr. Oswald, and after stating to him the first three of these objects, I said everything respecting them that appeared to me necessary, but at the same time with a greater degree of caution than I could have wished, because I well knew it would become the subject of a long letter to the ministry. On reflecting, however, how necessary it was that Lord Shelburne should know our sentiments and resolutions respecting these matters, and how much better they could be conveyed in conversation than by letter, and knowing also that Mr. Vaughan was in confidential correspondence with him, and he was and always had been strongly attached to the American cause, I concluded it would be prudent to prevail upon him to go immediately to England.

I accordingly had an interview with Mr. Vaughan, and he immediately despatched a few lines to Lord Shelburne, desiring that he would delay taking any measures with M. Rayneval until he should either see or hear further from him.

Mr. Vaughan agreed to go to England, and we had much previous conversation on the points in question, the substance of which was:

That Britain, by a peace with us, certainly expected other advantages than a mere suspension of hostilities, and that she doubtless looked forward to cordiality, confidence, and commerce.

That the manner as well as the matter of the proposed treaty was therefore of importance, and that if the late assurances respecting our independence were not realised by an unconditional acknowledgment, neither confidence nor peace could reasonably be expected; that this measure was considered by America as the touchstone of British sincerity, and that nothing could abate the suspicions and doubts of her good faith which prevailed there.

That the interest of Great Britain, as well as that of the Minister, would be advanced by it; for as every idea of conquest had become absurd, nothing remained for Britain to do but to make friends of those whom she could not subdue; that the way to do this was by leaving us nothing to complain of, either in the negotiation or in the treaty of peace, and by liberally yielding every point essential to the interest and happiness of America; the first of which points was that of treating with us on an equal footing.

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That it would not be wise in Great Britain to think of dividing the fishery with France and excluding us; because we could not make peace at such an expense, and because such an attempt would irritate America still more; would perpetuate her resentments, and induce her to use every possible means of retaliation by withholding supplies in future to the fishery, and by imposing the most rigid restraints on a commerce with Britain.

That it would not be less impolitic to oppose us on the point of boundary and the navigation of the Mississippi—

1st. Because our right to extend to the Mississippi was proved by our charters and other acts of government and our right to its navigation was deducible from the laws of nature and the consequences of revolution, which vested in us every British territorial right. It was easy, therefore, to foresee what opinions and sensations the mere attempt to dispossess us of these rights would diffuse throughout America.

2dly. Because the profits of an extensive and lucrative commerce, and not the possession of vast tracts of wilderness, were the true objects of a commercial European nation.

93 That by our extending to the Mississippi to the west, and to the proclamation bounds of Canada to the north, and by consenting to the mutual free navigation of our several lakes and rivers, there would be an inland navigation from the Gulf of St. Lawrence to that of Mexico by means of which the inhabitants west and north of the mountains might with more ease be supplied with foreign commodities than from ports on the Atlantic, and that this immense and growing trade would be in a manner monopolised by Great Britain, as we should not insist that she should admit other nations to navigate the waters that belonged to her. That, therefore, the navigation of the Mississippi would in future be no less important to her than to us, it being the only convenient outlet through which they could transport the productions of the western country, which they would receive in payment for merchandise vended there.

That as to retaining any part of that country, or insisting to extend Canada so as to comprehend the lands in question, it would be impolitic for these further reasons. Because it would not be in their power either to settle or govern that country; that we should refuse to yield them any aid, and that the utmost exertions of Congress could not prevent our people from taking gradual possession of it by making establishments in different parts of it. That it certainly could not be wise in Britain, whatever it might be in other nations, thus to sow the seeds of future war in the very treaty of peace, or to lay in it the foundation of such distrusts and jealousies as on the one hand would forever prevent confidence and real friendship, and on the other naturally lead us to strengthen our security by intimate and permanent alliances with other nations.

I desire Mr. Vaughan to communicate these remarks to Lord Shelburne, and to impress him with the necessity and policy of taking a decided and manly part respecting America.

Mr. Vaughan set off the evening of the 11th of September. It would have relieved me from much anxiety and uneasiness to have concerted all these steps with Dr. Franklin, but on conversing with him about M. Rayneval's journey, he did not concur with me in sentiment respecting the objects of it, but appeared to have a great degree of confidence in this court, and to be much embarrassed and constrained by our instructions.

Nothing now remained to be done but to complete the letter we had agreed to write to the Count de Vergennes, stating our objections to treat with Mr. Oswald under his present commission. I accordingly prepared the following draft of such a letter, and it was under Dr. Franklin's consideration when the news of our success in England rendered it unnecessary:

[Here follows the "proposed draft" of a letter to Count de Vergennes.]

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On the 27th of September, Mr. Vaughan returned here from England, with the courier that brought Mr. Oswald's new commission, and very happy were we to see it. Copies of it have already been sent to you, so that I will not lengthen this letter by inserting it here; nor



will I add anything further on this head at present, than to assure you that Mr. Vaughan greatly merits our acknowledgments.

The next thing to be done was to prepare and draw up the proposed articles. They were soon completed and settled between us and Mr. Oswald, by whom they were sent to his court, with letters declaring his opinion that they ought to be accepted and agreed to; but they differed with him in opinion.

These articles, for very obvious reasons, were not communicated to the Count de Vergennes.

Mr. Oswald did not receive any opinion from his court relating to our articles until the 23d of October, when letters from the minister informed him that the extent of our boundaries, and the situation of the Tories, &c., caused some objections, and the minister's secretary was on the way here to confer with us on those subjects.

On the 24th of October, I dined at Passy with Dr. Franklin, where I found M. Rayneval. After dinner we were in private with him a considerable time. He desired to know the state of our negotiation with Mr. Oswald. We told him that difficulties had arisen about our boundaries, and that one of the minister's secretaries was coming here with papers and documents on that subject. He asked us what boundaries we claimed. We told him the River St. John to the east, and ancient Canada, as described in the proclamation, to the north. He contested our right to such an extent to the north, and entered into several arguments to show our claim to be ill founded. These arguments were chiefly drawn from the ancient French claims, and from a clause in the proclamation restraining governors from making grants in the Indian country, &c.

He inquired what we demanded as to the fisheries. We answered that we insisted on enjoying a right in common to them with Great Britain. He intimated that our views should not extend further than a coast fishery, and insinuated that pains had lately been taken in the eastern States to excite their apprehensions, and increase their demands on that head. We told him that such a right was essential to us, and that our people would not be content to make peace without it; and Dr. Franklin explained very fully their great importance to the eastern States in particular. He then softened his manner, and observed that it was natural for France to wish better to us than to England; but as the fisheries were a great nursery for seamen, we might suppose that England would be disinclined to admit others to share in it, and that for his part he wished there might be as few obstacles to a peace as possible. He reminded us, also, that Mr. Oswald's new commission had been issued posterior to his arrival at London.

On the 26th of October Mr. Adams arrived here, and in him I have found a very able and agreeable coadjutor.

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94 No. 98.—1782, November 19: Letter, Mr. Townshend to Mr. Strachey (who was returning to Paris).

SIR, I send at last the draft of the Preliminary Articles, which have undergone a great deal of discussion, and required a good deal of management to get them into their present form.

You were, before you set out, so well apprised of the points, which would be insisted upon, as well as what might, if absolutely necessary, be given up, that it would be taking up uselessly the time of both of us to enlarge upon these subjects.

A great many of the alterations are merely in the form of the articles, and in the wording of them; to these surely there can be no objection, for I suppose the Commissioners will think that in point of form this treaty should be like all others.

The defence which they make upon some points can not be allowed, as it would be impossible to negotiate with those, who have not power to treat upon points which must have been foreseen as subjects of discussion, and in which the honour of this country is deeply engaged. I might add at the same time, that I think both the reputation and real interest of the Americans equally at stake, but of those matters it is their business to take care.

Their powers appear as full as those with which the King has been pleased to invest Mr. Oswald; and in some instances, the debts, for example, they have made use of them upon subjects, in which the Provincial Legislatures are concerned. I need hardly in this place caution you, however, not to make use of that argument in such a manner as to induce them to retract what they have agreed to upon the subject of the debts.

But if they persist in affecting to have no power to treat on these subjects, you will intimate to them in a proper manner, that they are driving us to a necessity of applying directly to those who are allowed to have the power of negotiating on them; and that the failure of the treaty, which we have most sincerely endeavoured on our part to bring to a conclusion, will be entirely at their door.

The provisions regarding the debts being exactly in the terms which they proposed, we apprehend there can be no difficulty on that subject. I must here observe, that the article now proposed for restitution is formed exactly upon the same model. The argument, therefore, on the ground of want of power, cannot, as I have already remarked, be very consistently urged; but you will observe the necessary discretion in pressing that point.

With regard to the other objection stated by the American Commissioners, that the confiscated lands have since passed through a variety of hands, that is effectually obviated by a proposal, which you are authorised to make of an offer of the payment of the *bonâ fide* purchase money to the real purchaser.

You will observe that in the article of restitution the words *rights* and *properties* are added to the word *estates*, by which it is meant to protect the proprietary interests in America derived under the most solemn charters. It is very desirable, that you should by every possible argument insist upon this addition, but at the same time it must be left to your discretion to waive it in the end if absolutely necessary.

You will perceive in the draft another modification suggested by a letter from General Leslie, enclosing one from Mr. Mathew, the American Governor of Carolina. This modification is to be added to any of the others according as either of them may be accepted.

You will observe some addition made to the article of the fishery. The words are extracted from the article of the Treaty of Paris

relative to the Newfoundland fishery, and places the Americans exactly in the same state as the French were by the treaty alluded to.

This is thought advisable as incident to the rights of sovereignty, as well as in order to prevent quarrels between the fishermen of both countries, and I am sure, that in the outset it will be wise for those, who wish a thorough and perfect reconciliation to remove as far as possible all objects of dispute. But the manner as well as the extent of urging this will be left to your discretion on the whole, but particularly with regard to the fifteen leagues off Cape Breton. There seem to be no reasons for including the Magdalen Islands.

I send to you General Leslie's letter with its enclosure, and likewise one of Sir Guy Carleton's relative to the state of our prisoners in North America. I am sorry to say that chicane of every kind is the recompense we meet with for the fair and voluntary return of the American seamen, who were prisoners in England. I had intended to have sent you Dr. Franklin's letters on the subject of our returning the American prisoners, but cannot immediately find them. I wish the subject might be mentioned to him in such manner as may be least likely to raise acrimony, if you find a convenient opportunity.

With regard to the secret article, you will observe, that if you can satisfy the Americans, that they have attained their object without inserting the article itself, it is highly desirable, that it should rest rather on private assurances; as the insisting on anything further can have no other effect, than carrying an unnecessary harshness towards individuals.

I now come to the conclusion, which is to lay before you in as few and as clear words as I can, what the King expects should be the conduct observed in this very important business.

No exceptions are to be [sic.] in case of *personal* amnesty.

The payment of debts before 1775 due to real British subjects and restitution of their property. You are to take care to have as clear and as favorable definitions on this head as possible.

With regard to the rest of the articles, you are to use your best endeavours and to make the best terms you can.

95 When you offer the substance of the secret article you must be aware that it is only for the sake of acquiring the full benefit of the fifth article without any of the modifications.

The Americans by this treaty will have their Independence confirmed to them, and will acquire the boundaries which they claim themselves. New York and Charlestown will be ceded to them with the artillery in them, that has been taken from them in the war. The country has already shown a sufficient appearance of returning kindness to the Americans by the Parliamentary Resolution against carrying on offensive war.

We demand in restitution and indemnity what it is clearly in their power to grant, and trust that our offers effectually remove the only solid ground of objection on their part, as we are willing that the *bonâ fide* purchase-money should be paid to the real purchasers, and as by the substance of our secret article we agree to except the persons most obnoxious to America.

We are fully persuaded that the only real ground that induced the Commissioners to refuse restitution was the apprehension of having these persons return to them: and we are even authorised in this opin-

ion by the language which the Commissioners held to you upon this subject.

This once provided for, it is impossible to suppose them so blind to their real interests as wantonly to proscribe so large a number of fellow-citizens, whose repossession of their property and reunion to their country is as essential to the prosperity of America as to the honour of Great Britain.

If these reasonings are true, and satisfaction in this great point necessary with a view to both countries, there can surely be no doubt, but that it is essentially better to have them made the object of the treaty, than to leave them to be matter of future discussion, and in all probability the source of future jealousy and dispute.

On the whole, it cannot be conceived, that America obtaining and confirming to herself such great advantages by this treaty, can after her professions to this country obstinately persist in refusing what honour, justice, and good policy demand for no other purpose than to offer an affront the most humiliating and degrading to Great Britain.

I have now nothing more to add. I have enclosed to you a copy of my letter to Mr. Oswald, and I must beg the favour of you to show this to Mr. Fitzherbert.

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No. 99.—*Draft of the Preliminary Articles sent by Mr. Townshend to Mr. Strachey.*

ARTICLES agreed upon by and between Richard Oswald, Esq., the Commissioner of His Britannic Majesty, for treating of peace with the Commissioners of the United States of America, in behalf of His said Majesty, on the one part, and John Adams, Benjamin Franklin, and John Jay, three of the Commissioners of the said States for treating of peace with the Commissioners of His said Majesty on their behalf, on the other part, to be inserted in and to constitute the treaty of peace proposed to be concluded between the Crown of Great Britain, and the said United States, but which treaty is not to be concluded, until terms of a peace shall be agreed upon between Great Britain and France, and His Britannic Majesty shall be ready to conclude such treaty accordingly.

N. B.—If the American Commissioners wish to have the remainder of the title proposed by them, which follows the words “treaty accordingly,” they may be admitted.

Whereas reciprocal advantages and mutual convenience are found by experience to form the only permanent foundation of peace and friendship between States, it is agreed to form the Articles of the proposed Treaty on such principles of liberal equity and reciprocity, as that partial advantages (those seeds of discord) being excluded, such a beneficial and satisfactory intercourse between the two countries may be established as to promise and secure to both, perpetual peace and harmony.

Article 1st. His Britannic Majesty acknowledges the said United States, viz., New Hampshire, Massachusetts Bay, Rhode Island and Providence Plantations, Connecticut, New York, New Jersey, Pennsylvania, Delaware, Maryland, Virginia, North Carolina, South Caro-

lina, and Georgia, to be free, sovereign, and independent States; that he treats with them as such, and for himself, his heirs and successors relinquishes all claims to the government, proprietary and territorial rights of the same, and every part thereof; and that all disputes which might arise in future, on the subject of the boundaries of the United States may be prevented. It is hereby agreed and declared that the following are and shall be their boundaries, viz. :—

Art. 2d. From the north-west angle of Nova Scotia, viz., that angle which is formed by a line drawn due north from the source of St. Croix River to the High lands, along the said High lands which divide those rivers that empty themselves into the River St. Lawrence, from those which fall into the Atlantic Ocean, to the  
96 north-westernmost head of Connecticut River; thence down along the middle of that river to the Forty fifth degree of north latitude, from thence by a line due west on said latitude, until it strikes the Iroquois River or Cataroquy, thence along the middle of said river to Lake Ontario, through the middle of said lake until it strikes the communication by water between that lake and Lake Erie, thence along the middle of said communication into Lake Erie, through the middle of said lake, until it arrives at the water communication between that lake and Lake Huron, thence along the middle of said water communication into Lake Huron, thence through the middle of said lake to the water communication between that lake and Lake Superior, thence through Lake Superior northward of the Isles Royal and Philipeaux, to the Long Lake, thence through the middle of said Long Lake and the water communication between it, and the Lake of the Woods, to the said Lake of the Woods, thence through the said lake to the most north-western point thereof, and from thence on a due western course to the River Mississippi, thence by a line to be drawn along the middle of the said River Mississippi, until it shall intersect the northernmost part of the 31st degree of north latitude.

*South*, by a line to be drawn due east from the determination of the line last mentioned, in the latitude of 31 degrees north of the Equator, to the middle of the River Apalachicola, or Catahouchi, thence along the middle thereof to its junction with the Flint River, thence straight to the head of St. Mary's River, and thence down along the middle of St. Mary's River to the Atlantic Ocean.

*East*, by a line to be drawn along the middle of the River St. Croix, from its mouth in the Bay of Fundy to its source, and from its source directly north to the aforesaid High lands, which divide the rivers that fall into the Atlantic Ocean from those which fall into the River St. Lawrence; comprehending all islands within Twenty leagues of any part of the shores of the United States, and lying between lines to be drawn due east from the points, where the aforesaid boundaries between Nova Scotia on the one part, and East Florida on the other, shall respectively touch in the Bay of Fundy and the Atlantic Ocean, excepting such islands as now are, or heretofore have been, within the limits of the said province of Nova Scotia.

[Separate article to be added at the end of the treaty.]

It is understood and agreed, that in case Great Britain at the conclusion of the present war, shall recover, or be put in possession of West Florida, the line of north boundary between the said province and the United States, shall be a line drawn from the mouth of the

River Yassons, where it unites with the Mississippi, due east to the River Apalachicola.]

Art. 3d. The citizens of the United States shall have the liberty of taking fish of every kind on all the banks of Newfoundland, and also in the Gulf of St. Lawrence, and also to dry and cure their fish on the shores of the Isle of Sables, and on the shores of any of the unsettled bays, harbours, and creeks of the Magdalen Islands in the Gulf of St. Lawrence, so long as such bays, harbours and creeks shall continue and remain unsettled. On condition that the citizens of the said United States do not exercise the said fishery, but at the distance of Three leagues from all the coasts belonging to Great Britain, as well those of the continent, as those of the islands situated in the Gulf of St. Lawrence. And as to what relates to the fishery on the coasts of the island of Cape Breton out of the said gulf, the citizens of the said United States shall not be permitted to exercise the said fishery, but at the distance of fifteen leagues from the coasts of the island of Cape Breton.

Art. 4th. It is agreed, that the British creditors shall meet with no lawful impediment to the recovery of the full value in sterling money of such *bonâ fide* as were contracted by any persons who are citizens of the said United States before the year 1775.

Art. 5th. It is agreed, that persons whose estates, rights and properties in America have been confiscated at any time during the war shall meet with no lawful impediment to the recovery of the same, they refunding to any persons who may be now in possession, the *bonâ fide* price (where any has been given) which such persons may have paid on purchasing any of the said lands since the confiscation.

[In case this article cannot be obtained in its full extent, to propose the following modifications, in the order they stand:—

*First modification.*—It is agreed, that real British subjects, and persons who during the war have continued to reside in districts now in the possession of His Majesty's arms, and persons who have not actually borne arms against the said United States, and whose lands have been confiscated at any time during the war, shall meet with no lawful impediment to the recovery of the same, they refunding to any persons who may be now in possession the *bonâ fide* price (where any has been given) which such persons may have paid on purchasing any of the said lands since the confiscation.

*Second modification.*—It is agreed, that real British subjects, and all persons who left America before the 1st January, 1777, and whose lands have been confiscated at any time during the war, shall meet with no lawful impediment to the recovery of the same, they refunding to any persons who may be now in possession the *bonâ fide* price (where any has been given) which such persons may have paid on purchasing any of the said lands since the confiscation.

*Third modification.*—It is agreed that real British subjects and persons who left America before the 1st January, 1775, and whose estates have been confiscated at any time during the war, shall meet with no lawful impediment in the recovery of the same; they refunding to any persons who may be now in possession the *bonâ fide* price (where any has been given) which such persons may have paid on purchasing any of the said lands since the confiscation.

*Fourth Modification.*—It is agreed, that real British subjects, whose estates have been confiscated at any time during the war, shall

meet with no impediment to the recovery of the same; they refund-  
 ing to any persons who may be now in possession, the *bonâ fide*  
 97 price (where any has been given) which such persons may  
 have paid on purchasing any of the said lands since the con-  
 fiscation.

*Supplemental Modification.*—To be added to either of the four  
 before mentioned. It is agreed, that all persons who have any inter-  
 est in confiscated lands, either by debts or marriage settlements, shall  
 meet with no lawful impediment in the prosecution of their just  
 rights.

N. B.—In case this article cannot be obtained, without some further  
 modification, to propose the following as a *separate and secret* article  
 to be added at the end of the treaty.

### Separate and Secret Article.

The King of Great Britain undertakes and agrees, that none of the  
 persons specified in the list hereunto annexed, shall at any time claim  
 any restitution of lands, or any other benefit under the 5th article of  
 this treaty; His Majesty being willing to make provision for them,  
 in such other manner as he shall think fit. And such of the persons  
 specified in the said list as may be in America at the time of the  
 ratification of the treaty by the United States shall be allowed six  
 months thereafter, to remove to any part of the world, and also at  
 their election to dispose of, within the said term, or to carry with  
 them their goods and effects, and shall during the said six months  
 enjoy full security for their lives, persons, and effects.]

Art. 6th. There shall be a full and entire amnesty of all acts  
 and offences which have been, or may be supposed to have been  
 committed on either side by reason of the war, and in the course  
 thereof; and no one shall hereafter suffer in life or person, or be  
 deprived of his property for the part he may have taken therein.  
 All persons in confinement on that account shall immediately on  
 the ratification of the treaty in America be set at liberty; all prosecu-  
 tions which may be depending in consequence of any of the said  
 offences shall cease, and no fresh prosecutions shall at any time here-  
 after be commenced thereupon.

Art. 7th. There shall be a firm and perpetual peace between His  
 Britannic Majesty and the said States, and between the subjects of  
 the one, and the citizens of the other. Wherefore all hostilities,  
 both by sea and land, shall then immediately cease: all prisoners  
 on both sides shall be set at liberty; and His Britannic Majesty shall,  
 with all convenient speed and without causing any destruction, with-  
 draw all his armies, garrisons and fleets from the said United States.  
 and from every post, place, and harbour within the same; leaving  
 in all fortifications the American artillery that may be therein. And  
 shall also order and cause all archives, deeds, and papers belonging  
 to any of the said States, or their citizens, which in the course of  
 the war may have fallen into the hands of his officers, to be forth-  
 with restored, and delivered to the proper States and persons to  
 whom they belong.

7th. That any person adhering to the British Government, having  
 claim to property within the United States, and who may not choose  
 to go there in person, shall have liberty to send or employ one or

more agents or attorneys to recover and dispose of his said property; and such agents or attorneys to recover and dispose of his said property; and such agents or attorneys shall be entitled to and receive the same protection and advantages as would be allowed to the claimants themselves, were they to appear in person.

Art. 8. The navigation of the River Mississippi, from its source to the ocean, shall forever remain free and open to the subjects of Great Britain and the citizens of the United States.

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No. 100.—1782, November 19: *Extract from letter, Mr. Townshend to Mr. Oswald.*

... The alterations we have made in their project are such as I am sure they must find upon reflection what they may assent to consistently with what they have agreed to already, and as are indispensably necessary to the honor and interest of this country.

I must therefore assure you that it is the unanimous resolution of the Cabinet to adhere to the treaty now proposed, and I do not choose to prognosticate the danger of the effects of the refusal of the Commissioners, or that spirit of conciliation which has now for some time prevailed in this country, if it prevents the treaty being signed before the meeting of Parliament.

As Mr. Strachey is, as I said before, fully acquainted with the opinion of the King's servants upon this head, I shall refer you to him for all further particulars, and arguments.

You are by the 6th Article of your instructions directed not to proceed to the signature of any Act whatever with the Commissioners of the Colonies, without having received the King's special order for that purpose. I am now therefore to signify to you that it is His Majesty's pleasure that in the present state of this business with regard to every article of the treaty, and any possible alteration or modification, which may yet be wished by the American Commissioners you should consult most confidentially with Mr. Strachey and Mr. Fitzherbert. The recent personal intercourse of the former with His Majesty's Ministers, has put him in full possession of their sentiments, and the minute acquaintance of the latter with the state of the foreign negotiation will render his assistance of the greatest advantage to you. Mr. Fitzherbert has from the beginning been instructed to communicate with you on every point in which the two treaties may affect each other. He has now particular instructions to furnish you with every assistance towards the success of your negotiation, which may be drawn from the present dispositions

98 of the Court of France to conclude a general peace; and if either of the American Commissioners should, as there is great reason to expect, agree to the articles of the treaty in the shape they are now transmitted from hence, or if you and Mr. Fitzherbert and Mr. Strachey should, on your joint consideration, be of opinion that such alterations or modifications as they may propose are admissible, I am to signify to you the King's special commands, that you should in that case forthwith sign the articles so agreed upon between you and the American Commissioners without waiting for any further instructions or directions from hence.



In a matter, however, of this extreme delicacy and importance, I cannot omit recommending to you for the same reasons which I have already stated to you, that you should have the precaution previous to your signing to receive from Mr. Strachey and Mr. Fitzherbert their opinions under their hands signifying their concurrence in the measure.

I am &c

THOS. TOWNSHEND.

No. 101.—1782, November 19–20: *Extracts from Mr. Adams' Diary.*

NOVEMBER 19. 1782.

" . . . if I were the King of Great Britain . . . I would send the Earl of Effingham ambassador to Congress, instructed to assure them that I would do them my best offices to secure to them the fisheries, their extent to the Mississippi, and the navigation of that river: that I would favor all their negotiations in Europe, upon their own plan of making commercial treaties with all nations, that I would interpose my good offices with the Barbary States, to procure them Mediterranean passes, etc."

20. Wednesday, Dr. Franklin came in, and we fell into conversation; from one thing to another we came to politics. I told him, that it seemed uncertain, whether Shelbourne could hold his ground without leaning upon Lord North, on one hand, or Fox, on the other; that if he joined North, or North and company should come in, they would go upon a contracted system, and would join people at this Court to deprive us of the Mississippi and the fisheries, &c.; if Fox came in, or joined Shelbourne, they would go upon a liberal and manly system; and this was the only chance they had; no nation had ever brought itself into such a labyrinth; perplexed with the demands of Holland, Spain, France, and America, their funds were failing, and the money undertaken to be furnished was not found. Franklin said, that the bank came in aid, and he learned that large sums of scrip were lodged there. "In this situation," said I, "they have no chance but to set up America very high; and, if I were King of Great Britain, I would take that tone; I would send the first duke of the kingdom ambassador to Congress, and would negotiate in their favor at all the neutral courts, &c.; I would give the strongest assurances to Congress of support in the fisheries, the Mississippi, &c. and would compensate the Tories myself."

I asked, what could be the policy of this Court in wishing to deprive us of the fisheries and Mississippi? I could see no possible motive for it, but to plant seeds of contention for a future war; if they pursued this policy, they would be as fatally blinded to their true interests as ever the English were. Franklin said, they would be every bit as blind; that the fisheries and Mississippi could not be given up; that nothing was clearer to him than that the fisheries were essential to the Northern States, and the Mississippi to the Southern, and, indeed, both to all. I told him that Mr. Gérard had certainly appeared to America, to negotiate to these ends, namely,—to persuade Congress to give up both; this was the reason of his being so unpopular in America, and this was the cause of their dislike to Samuel Adams, who had spoken very freely both to Gérard and his Congress

on these heads; that Marbois appeared now to be pursuing the same objects. Franklin said, he had seen his letter. I said I was the more surprised at this, as Mr. Marbois, on our passage to America, had often said to me, that he thought the fishery our natural right and our essential interest, and that we ought to maintain it, and be supported in it; yet that he appeared now to be manœuvring against it; I told him that I always considered their extraordinary attack upon me, not as arising from any offence or anything personal, but as an attack upon the fishery; there had been great debates in Congress upon issuing the first commission for peace, and in settling my instructions; that I was instructed not to make any treaty of commerce with Britain without an express clause acknowledging our right to the fishery; this Court knew that this would be, when communicated to the English, a strong motive with them to acknowledge our right; and, to take away this, they had directed their intrigues against me, to get my commission annulled, and had succeeded; they hoped also to gain some advantage in these points by associating others with me in the commission for peace; but they had failed in this; for the Mississippi and fishery were now much more secure than if I had been alone; that debates had run very high in Congress; that Mr. Drayton and Gouverneur Morris had openly espoused their plan, and (a) argued against the fishery; that Mr. Laurens and others of the Southern gentlemen had been stanch for them, and contended

99 that, as nurseries of seamen and sources of trade, the Southern States were as much interested as the Northern; that debates had run so high, that the Eastern States had been obliged to give in their ultimatum in writing, and to say they would withdraw if any more was done; and that this point was so tender and important, that if not secured, it would be the cause of a breach of the union of the States; and their politics might, for what I knew, be so profound as to mean to lay a foundation for a rupture between the States, when, in a few years, they should think them grown too big; I could see no possible motive they had, to wish to negotiate the Mississippi into the hands of Spain, but this; knowing the fine country in the neighborhood, and the rapidity with which it would fill with inhabitants, they might force their way down the Mississippi and occasion another war; they had certainly sense enough to know, too, that we could not, and would not, be restrained from the fishery; that our people would be constantly pushing for it, and thus plunge themselves into another war, in which we should stand in need of France; if the old Ministry in England should come in again, they would probably join this Court in attempting to deprive us; but all would not succeed; we must be firm and steady, and should do very well. "Yes," he said, "he believed we should do very well, and carry the points."

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Mr. Jay agreed with me in all I had said, and added, that six days would produce the King's speech; if that speech should inform Parliament that he had issued a commission to treat with the United States, and the two houses should thank him for it, it would look as if a good plan was to prevail; but if not, we should then take measures to communicate it far and wide.

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<sup>a</sup> Note in the margin by the author: "A mistake, as Mr. Jay tells me."

I told him I thought, in that case, we should aid opposition as much as we could, by suggesting arguments to those who would transmit them in favor of America, and in favor of those who had the most liberal sentiments towards America, to convince them that the wing-clipping plan was ruinous to England, and the most generous and noble part they could act towards America, the only one that could be beneficial to the nation; and to enable them to attack a contracted ministry with every advantage that could be.

I thought it was now a crisis in which good will or ill will towards America would be carried very far in England; a time, perhaps, when the American Ministers may have more weight in turning the tide of sentiment, or influencing the changes of administration, than they ever had before, and, perhaps, than they would have again; that I thought it our duty, upon this occasion, to say every thing we could to the Englishmen here, in order that just sentiments might prevail in England at this moment; to countenance every man well-disposed, and to disabuse and undeceive everybody; to drive out of countenance and into infamy every narrow thought of cramping, stinting, impoverishing, or enfeebling us; to show that it is their only interest to show themselves our friends, to wear away, if possible, the memory of past unkindnesses; to strike with us now upon our own terms, because, though we had neither power nor inclination to make peace without our allies, yet the very report that we had got over all our difficulties, would naturally make all Europe expect peace, would tend to make Spain less exorbitant in her demands, and would make Holland more ardent for peace, and dispose France to be more serious in her importunities with Spain and Holland, and even render France herself easier, though I did not imagine she would be extravagant in her pretensions; to show them the ruinous tendency of the war if continued another year or two. Where would England be if the war continued two years longer? what the state of her finances? what her condition in the East and West Indies, in North America, Ireland, Scotland, and even in England? What hopes have they of saving themselves from a civil war? If our terms are not now accepted they will never again have such offers from America; they will never have so advantageous a line; never, their debts; never, so much for the tories, and, perhaps, a rigorous demand of compensation for the devastations they have committed.

Mr. Jay agreed with me in sentiment, and, indeed, they are the principles he has uniformly pursued through the whole negotiation before my arrival; I think they cannot be misunderstood or disapproved in Congress.

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No. 102.—1782, November 21: Letter, Mr. Adams to Mr. Livingston.

PARIS, November 21, 1782.

SIR: We live in critical moments. Parliament is to meet, and the King's speech will be delivered on the 26th. If the speech announces Mr. Oswald's commission, and the two houses, in their answers, thank him for issuing it, and there should be no change in the ministry, the

prospect of peace will be flattering. Or, if there should be a change in the ministry, and the Duke of Portland, with Mr. Fox and Mr. Burke, should come in, it will be still more so. But if Richmond, Camden, Keppel, and Townshend should retire, and my Lord North and company come in, with or without the Earl of Shelburne, the appearances of peace will be very unpromising. My Lord North, indeed, cannot revoke the acknowledgment of our independence, and would not probably renounce the negotiations for peace, but ill-will to us is so habitual to him and his master, that he would fall in earnestly with the wing-clipping system; join in attempts to deprive us of the fisheries and the Mississippi, and to fasten upon 100 us the Tories, and in every other measure to cramp, stint, impoverish, and enfeeble us. Shelburne is not so orthodox as he should be, but North is a much greater heretic in American politics.

It deserves much consideration what course we should take in case the old ministry should come in whole or in part. It is certain, at present, that to be obnoxious to the Americans and their ministers is a very formidable popular cry against any minister or candidate for the ministry in England, for the nation is more generally for recovering the good-will of the Americans than they ever have been. Nothing would strike such a blow to any ministry as to break off the negotiations for peace; if the old ministry come in, they will demand terms of us at first, probably, that we can never agree to.

It is now eleven or twelve days since the last result of our conferences were laid before the ministry in London. Mr. Vaughan went off on Sunday noon, the 17th, so that he is no doubt before this time with my Lord Shelburne. He is possessed of an ample budget of arguments to convince his lordship that he ought to give up all the remaining points between us. Mr. Oswald's letters will suggest the same arguments in a different light, and Mr. Strachey, if he is disposed to do it, is able to enlarge upon them all in conversation.

The fundamental point of the sovereignty of the United States being settled in England, the only question now is, whether they shall pursue a contracted or a liberal, a good-natured or an ill-natured plan towards us. If they are generous, and allow us all we ask, it will be the better for them; if stingy, the worst. That France don't wish them to be very noble to us may be true. But we should be dupes, indeed, if we did not make use of every argument with them to show them that it is their interest to be so, and they will be the greatest bubbles of all if they should suffer themselves to be deceived by their passions, or by any arts, to adopt an opposite tenor of conduct.

I have the honour to be, &c.,

JOHN ADAMS.

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No. 103.—1782, November 22: Letter, Mr. Townshend to Mr. Oswald.

WHITEHALL, 22d November 1782

SIR, I trouble you with a very few lines to acquaint you that the Parliament is prorogued to the 5th December next, to give time to receive a final answer from the Powers with whom we are in negotiation. You cannot doubt, but that after that prorogation the session must commence.

I have only to add that we flatter ourselves that the business committed to your charge goes on well.

It will be particularly advisable to guard with caution the article relative to Newfoundland, that the indulgence granted to the Americans may not interfere either with what is the right of the King of Great Britain as the Sovereign of that island, or with what privileges may be granted by the treaty to the French.

I am with great regard Sir your most obedient humble servant,  
T. TOWNSHEND.

RICHD. OSWALD Esqr

No. 104.—1782, November 23: Letter, Lord Shelburne to Mr. Oswald.

Private

SHELBURNE HOUSE

23d Novr 1782.

To RICHARD OSWALD Esqre

DEAR SIR I flatter myself that the American Commissioners will consider the step we have taken in regard to Parliament, the City, &c., in its due light.

In regard to the fishery, we wish nothing but to keep distinctly to the principle so much dwelt upon by Dr. Franklin in the commencement of the negotiations, viz., the necessity of laying the foundation of permanent peace; and that no occasion, much less temptation, be left for future dissention. I need not tell you that the bickerings of fishermen, if not guarded against, may easily revive all that honest men of both sides are endeavouring to bury.

The same principle extends to the refugees. It is no idea of interest actuates us in regard to them; it is a higher principle. This country is not reduced to terms of *humiliation*, and certainly will not suffer them from America. If Ministers, through timidity or indolence, could be induced to give way, I am persuaded the nation would rise to do itself justice, and to recover its wounded honor. If the Commissioners reflect a moment with that coolness which ought to accompany their employment, I cannot conceive they will think it the interest of America to leave any root of animosity behind, much less to lodge it with posterity in the heart of the treaty.

101 It is a very inferior consideration, and what you will do me the justice to acknowledge that I never leant to, what affects the Ministers of the day. Our uniform conduct ought to speak for itself, and it must lie with the Americans what return they choose to make.

If the American Commissioners think that they will gain by the whole coming before Parliament, I do not imagine the refugees will have any objection.

I am &c

No. 105.—1782, November 25: Extract from Mr. Adams' Diary.

NOVEMBER 25, 1782.

Dr. Franklin, Mr. Jay, and myself, at eleven [o'clock,] met at Mr. Oswald's lodgings. Mr. Strachey told us he had been to London, and waited personally on every one of the King's Cabinet Council,

and had communicated the last propositions to them; they, every one of them, unanimously condemned that respecting the *torics*, so that that unhappy affair stuck, as he foresaw and foretold that it would.

The affair of the fishery too, was somewhat altered. They could not admit us to dry on the shores of Nova Scotia, nor to fish within three leagues of the coast, nor within fifteen leagues of the coast of Cape Breton. The boundary they did not approve; they thought it too extended, too vast a country, but they would not make a difficulty. That if these terms were not admitted, the whole affair must be thrown into Parliament, where every man would be for insisting on restitution to the refugees. He talked about excepting a few, by name, of the most obnoxious of the refugees.

I could not help observing that the ideas respecting the fishery appeared to me to come piping hot from Versailles. I quoted to them the words of our treaty with France, in which the indefinite and exclusive right to the fishery on the western side of Newfoundland was secured against us, according to the true construction of the treaties of Utrecht and Paris. I showed them the twelfth and thirteenth articles of the treaty of Utrecht, by which the French were admitted to fish from Cape Bona Vista to Cape Riche. I related to them the manner in which the cod and haddock came into the rivers, harbors, creeks, and up to the very wharves, on all the northern coast of America, in the spring, in the month of April, so that you have nothing to do but step into a boat and bring in a parcel of fish in a few hours; but that in May they begin to withdraw; we have a saying at Boston, that when the "blossoms fall, the haddock begin to crawl;" that is, to move into deep water, so that in summer you must go out some distance to fish. At Newfoundland it was the same; the fish, in March or April, were in shore in all the creeks, bays, and harbors, that is, within three leagues of the coasts or shores of Newfoundland and Nova Scotia; that neither French nor English could go from Europe and arrive early enough for the first fare; that our vessels could, being so much nearer, an advantage which God and nature had put into our hands; but this advantage of ours had ever been an advantage to England, because our fish had been sold in Spain and Portugal for gold and silver, and that gold and silver sent to London for manufactures; that this would be the course again; that France foresaw it, and wished to deprive England of it, by persuading her to deprive us of it; that it would be a master stroke of policy if she could succeed, but England must be completely the dupe before she would succeed.

There were three lights in which it might be viewed: 1. As a nursery for seamen; 2. As a source of profit; 3. As a source of contention. As a nursery of seamen, did England consider us as worse enemies than France? Had she rather France should have the seamen than America? The French marine was nearer and more menacing than ours. As a source of profit, had England rather France should supply the markets of Lisbon and Cadiz with fish, and take the gold and silver, than we? France would never spend any of that money in London; we should spend it all very nearly. As a source of contention, how could we restrain our fishermen, the boldest men alive, from fishing in prohibited places? How could our men see the French admitted to fish, and themselves excluded by

the English? It would then be a cause of disputes, and such seeds France might wish to sow. That I wished for two hours' conversation on the subject with one of the King's council; if I did not convince him he was undesignedly betraying the interest of his sovereign, I was mistaken. Strachey said, perhaps I would put down some observations in writing upon it. I said, with all my heart, provided I had the approbation of my colleagues; but I could do nothing of the kind without submitting it to their judgments, and that whatever I had said, or should say, upon the subject, however strongly I might express myself, was always to be understood with submission to my colleagues. I showed them Captain Coffin's letter, and gave them his character. His words are:—

Our fishermen from Boston, Salem, Newbury, Marblehead, Cape Ann, Cape Cod, and Nantucket, have frequently gone out on the fisheries to the Straits of Belle-Ile, north part of Newfoundland, and the banks adjacent thereto, there to continue the whole season, and have made use of the north part of Newfoundland, the Labrador coast in the Straits of Belle-Ile, to cure their fish which they have taken in and about those coasts. I have known several instances of vessels going there to load in the fall of the year, with the fish taken and cured at these places for Spain, Portland, &c. I was once concerned in a voyage of that kind myself, and speak from my own knowledge.

102 From Cape Sables to the Isle of Sables, and so on, to the Banks of Newfoundland, are a chain of banks extending all along the coast, and almost adjoining each other, and those banks are where our fishermen go for the first fare in the early part of the season. Their second fare is on the Banks of Newfoundland, where they continue to fish, till prevented by the tempestuous and boisterous winds which prevail in the fall of the year on that coast. Their third and last fare is generally made near the coast of Cape Sables, or banks adjoining thereto, where they are not only relieved from those boisterous gales, but have an asylum to fly to in case of emergency, as that coast is lined, from the head of Cape Sables to Halifax, with most excellent harbors. The sea-cow fishery was, before the present war, carried on to great advantage, particularly from Nantucket and Cape Cod, in and about the river St. Lawrence, at the island St. John's and Anticosti, Bay of Chaleurs, and the Magdalen Islands, which were the most noted of all for that fishery. This oil has the preference to all other, except spermaceti.

Mr. Jay desired to know whether Mr. Oswald had now power to conclude and sign with us. Strachey said he had absolutely. Mr. Jay desired to know, if the propositions now delivered us were their ultimatum. Strachey seemed loath to answer, but at last said, No. We agreed these were good signs of sincerity. Bancroft came in this evening and said it was reported that a courier had arrived from M. Rayneval, in London, and that after it, the Count de Vergennes told the King that he had the peace in his pocket, that he was now master of the peace.

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No. 106.—1782, November 25: Extract from MSS. Department of State (United States); 5 Sparks' Dip. Rev. Corr. 461.

NOVEMBER 25, 1782.

The three commissioners, Adams, Franklin, and Jay, met at Mr. Oswald's lodgings at the *Hôtel de Muscovie*, and after some conference Mr. Oswald delivered them the following articles, as fresh proposals of the British ministry, sent by Mr. Strachey, viz:

Articles agreed upon by and between Richard Oswald, the commissioner of his Britannic majesty for treating of peace with the commissioners of the United States of America, in behalf of his said

majesty on the one part, and John Adams, Benjamin Franklin, and John Jay, three of the commissioners of the said States, for treating of peace with the commissioner of his said majesty, on their behalf on the other part, to be inserted in, and to constitute the treaty of peace proposed to be concluded between the crown of Great Britain and the said United States, but which treaty is not to be concluded until the terms of a peace shall be agreed upon between Great Britain and France, and his Britannic majesty shall be ready to conclude such treaty accordingly.

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ARTICLE III. The citizens of the said United States shall have *the liberty* of taking fish of every kind on all the banks of Newfoundland, and also in the Gulf of St. Lawrence; and also to dry and cure their fish on the shores of the Isle of Sables and on the shores of any of the unsettled bays, harbors, and creeks of the Magdalen Islands, in the Gulf of St. Lawrence, so long as such bays, harbors, and creeks shall continue and remain unsettled; on condition that the citizens of the said United States do not exercise the fishery, but at the distance of three leagues from all the coast belonging to Great Britain, as well those of the continent as those of the islands situated in the Gulf of St. Lawrence. And as to what relates to the fishery on the coast of the Island of Cape Breton out of the said gulf, the citizens of the said United States shall not be permitted to exercise the said fishery, but at the distance of fifteen leagues from the coasts of the Island of Cape Breton.

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No. 107.—1782, November 26, 27: *Extract from Mr. Adams' Diary.*

. . . . Before dinner Mr. Fitzherbert came in, whom I had never seen before, a gentleman of about thirty-three; seems pretty discreet and judicious, and did not discover those airs of vanity which are imputed to him. He came in consequence of the desire I expressed yesterday of knowing the state of the negociation between him and the Count de Vergennes respecting the fishery. He told us, that the Count was for fixing the boundaries where each nation should fish; he must confess he thought the idea plausible; for that there had been great dissensions among the fishermen of the two nations; that the French marine office had an apartment full of complaints and representations of disputes; that the French pretended that Cape Ray was the Point Riche.

I asked him if the French demanded of him an exclusive right to fish and dry between Cape Bonavista and the Point Riche. He said they had not expressly, and he intended to follow the words of the treaty of Utrecht and Paris, without stirring the point. I showed him an extract of a letter from the Earl of Egremont to the Duke of Bedford, March 1, 1763, in which it is said that by the 13th article of the treaty of Utrecht a liberty was left to the French to fish and to dry their fish on shore, and for that purpose to erect the necessary stages and buildings, but with an express stipulation "de ne pas séjourner dans la dite isle, au delà du dit tems



nécessaire pour pêcher et sécher les poissons." That it is a received law among the fishermen that whoever arrives first shall have his choice of the stations; that the Duc de Nivernois insisted that by the treaty of Utrecht the French had an exclusive right to the fishery from Cape Bonavista to Point Riche; that the King gave to his Grace the Duke of Bedford express instructions to come to an *éclaircissement* upon the point with the French ministry, and to refuse the exclusive construction of the treaty of Utrecht. I also showed him a letter from Sir Stamier Porteen, Lord Weymouth's secretary, to Lord Weymouth, enclosing an extract of Lord Egremont's letter to the Duke of Bedford, by which it appears that the Duc de Nivernois insisted "that the French had an exclusive right to the fishery from Cape Bonavista to Point Riche, and that they had, on ceding the Island of Newfoundland to Great Britain by the thirteenth article of the treaty of Utrecht, expressly reserved to themselves such an exclusive right, which they had constantly been in possession of till they were entirely driven from North America in the last war."

For these papers I am obliged to Mr. Izard. Mr. Fitzherbert said it was the same thing now, word for word, but he should endeavour to have the treaty conformable to those of Utrecht and Paris. But he said we had given it up by admitting the word "*exclusive*" into our treaty. I said perhaps not, for the whole was not conformable to the true construction of the treaties of Utrecht and Paris, and that if the English did not now admit the exclusive construction, they could not contend for it against us. We had only contracted not to disturb them, &c. I said it was the opinion of all the fishermen in America that England could not prevent our catching a fish without preventing themselves from getting a dollar. That the first fare was our only advantage; that neither the English nor French could have it. It must be lost if we had it not. He said he did not think much of the fishery as a source of profit, but as a nursery of seamen. I told him the English could not catch a fish the more or make a sailor the more for restraining us; even the French would rival them in the markets of Spain and Portugal. It was our fish they ought to call their own, because we should spend the profit with them; that the Southern States had staple commodities, but New England had no other remittances than the fishery, no other way to pay for their clothing; that it entered into our distilleries and West India trade, as well as our European trade, in such a manner that it could not be taken out or diminished without tearing and rending; that if it should be left to its natural course we could hire or purchase spots of ground on which to erect stages and building, but if we were straitened by treaty, that treaty would be given in instructions to governors and commodores, whose duty it would be to execute it; that it would be very difficult to restrain our fishermen: they would be frequently transgressing and making disputes and troubles.

He said his principal object was to avoid sowing seeds of future wars. I said it was equally my object, and that I was persuaded that if the germ of a war was left anywhere there was the greatest danger of its being left in the article respecting the fishery. The rest of the day was spent in endless discussions about the Tories. Dr. Franklin is very staunch against them—more decided a great deal on this point than Mr. Jay or myself.

*November 27.* . . . . Dined with Mr. Jay and spent some time before dinner with him and Dr. Franklin, and all the afternoon with them and Mr. Oswald, endeavoring to come together concerning the fisheries and the Tories.

No. 108.—1782, *November 28, 29: Extract from Mr. Adams' Diary.*

*November 28.* This morning I have drawn up the following project:

ARTICLE III. That the subjects of his Britannic majesty, and the people of the said United States, shall continue to enjoy, unmolested, the right to take fish of every kind, on the grand bank, and on all the other banks of Newfoundland; also in the Gulf of St. Lawrence, and in all other places, where the inhabitants of both countries used at any time heretofore to fish; and the citizens of the said United States shall have the liberty to cure and dry their fish on the shores of Cape Sables, and of any of the unsettled bays, harbors, or creeks of Nova Scotia, or any of the shores of the Magdalen Islands and of the Labrador coast. And they shall be permitted, in time of peace, to hire pieces of land, for terms of years, of the legal proprietors, in any of the dominions of his said majesty, whereon to erect the necessary stages and buildings, and to cure and dry their fish.

*November 29.* Met Mr. Fitzherbert, Mr. Oswald, Mr. Franklin, Mr. Jay, Mr. Laurens, and Mr. Strachey, at Mr. Jay's, *Hôtel d'Orléans*, and spent the whole day in discussions about the fishery and the Tories. I proposed a new article concerning the fishery; it was discussed and turned in every light, and multitudes of amendments proposed on each side, and, at last, the article drawn as it was finally agreed to.

104 The other English gentlemen being withdrawn upon some occasion, I asked Mr. Oswald if he could not consent to leave out the limitation of three leagues from all their shores, and the fifteen leagues from those of Louisbourg.

He said, in his own opinion, he was for it; but his instructions were such that he could not do it. I perceived by this, and by several incidents and little circumstances before, which I had remarked to my colleagues, who were much of the same opinion, that Mr. Oswald had an instruction not to settle the articles of the fishery and refugees without the concurrence of Mr. Fitzherbert and Mr. Strachey.

Upon the return of the other gentleman, Mr. Strachey proposed to leave out the word *right* of fishing and make it *liberty*. Mr. Fitzherbert said the word *right* was an obnoxious expression. Upon this I rose up and said, gentlemen, is there or can there be a clearer right? In former treaties, that of Utrecht, and that of Paris, France, and England have claimed the right, and used the word. When God Almighty made the Banks of Newfoundland at three hundred leagues distance from the people of America, and at six hundred leagues distance from those of France and England, did He not give as good right to the former as to the latter? If Heaven, in the creation, gave a right, it is ours at least as much as yours. If occupation, use, and possession give a right, we have it as clearly as you. If war and blood and treasure give a right, ours is as good as yours.

We have been constantly fighting in Canada, Cape Breton, and Nova Scotia, for the defence of this fishery, and have expended

beyond all proportion more than you; if then the right can not be denied, why should it not be acknowledged, and put out of dispute? Why should we leave room for illiterate fishermen to wrangle and chicane?

Mr. Fitzherbert said, the argument is in your favor. I must confess your reasons appear to be good; but as Mr. Oswald's instructions were such that he did not see how he could agree with us; and, for my part, I have not the honor and felicity to be a man of that weight and authority in my country that you, gentlemen, are in yours (this was very genteelly said); I have the accidental advantage of a little favor with the present minister, but I can not depend upon the influence of my own opinion, to reconcile a measure to my countrymen. We can consider ourselves as little more than pens in the hands of Government at home, and Mr. Oswald's instructions are so particular.

I replied to this: The time is not so pressing upon us but that we can wait till a courier goes to London with your representations upon this subject, and others that remain between us, and I think the ministers must be convinced.

Mr. Fitzherbert said, To send again to London, and have all laid loose before Parliament, was so uncertain a measure it was going to sea again.

Upon this, Dr. Franklin said, that if another messenger was to be sent to London he ought to carry something more respecting a compensation to sufferers in America.

He produced a paper from his pocket, in which he had drawn up a claim, and he said the first principle of the treaty was equality and reciprocity. Now, they demanded of us payment of debts, and restitution, or compensation to the refugees. If a draper had sold a piece of cloth to a man upon credit, and then sent a servant to take it from him by force, and after bring his action for the debt, would any court of law or equity give him his demand, without obliging him to restore the cloth? Then he stated the carrying off of goods from Boston, Philadelphia, and the Carolinas, Georgia, Virginia, &c., and the burning of the towns, &c., and desired that this might be sent with the rest.

Upon this, I recounted the history of General Gage's agreement with the inhabitants of Boston, that they should remove with their effects, upon condition that they would surrender their arms; but as soon as the arms were secured, the goods were forbid to be carried out, and were finally carried off in large quantities to Halifax. Dr. Franklin mentioned the case of Philadelphia, and the carrying off of effects there, even his own library. Mr. Jay mentioned several other things, and Mr. Laurens added the plunders in Carolina, of negroes, plate, &c.

After hearing all this Mr. Fitzherbert, Mr. Oswald, and Mr. Strachey retired for some time, and returning, Mr. Fitzherbert said that, upon consulting together and weighing every thing as maturely as possible, Mr. Strachey and himself had determined to advise Mr. Oswald to strike with us, according to the terms we had proposed as our ultimatum, respecting the fishery and the loyalists. Accordingly we all sat down and read over the whole treaty and corrected it, and agreed to meet to-morrow at Mr. Oswald's house

to sign and seal the treaties, which the secretaries were to copy fair in the meantime.

I forgot to mention that when we were upon the fishery and Mr. Strachey and Mr. Fitzherbert were urging us to leave out the word *right* and substitute *liberty*, I told them at last, in answer to their proposal to agree upon all other articles and leave that of the fishery to be adjusted at the definitive treaty, I said I never could put my hand to any articles without satisfaction about the fishery; that Congress had, three or four years ago, when they did me the honor to give me a commission to make a treaty of commerce with Great Britain, given me a positive instruction not to make any such treaty without an article in the treaty of peace acknowledging our right to the fishery; that I was happy Mr. Laurens was now present, who, I believed, was in Congress at the time and must remember it. Mr. Laurens, upon this, said with great firmness, that he was in the same case, and could never give his voice for any articles without this. Mr. Jay spoke up, and said it could not be a peace, it would only be an insidious truce without it.

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105 No. 109.—1856: *Extract from Mr. C. F. Adams' book on the above.*

The conferences were resumed on the 25th of November, and Mr. Strachey appeared once more. His tone was apparently but little changed. The ministry, he said, continued dissatisfied with the refusal of a provision for the Tories, and they required modifications of the article on the fisheries. On the boundaries alone were they disposed to concede. But discouraging as this announcement seemed, it was actually more than compensated by the introduction of Mr. Fitzherbert, to whom the negotiation with France had already been intrusted, as an assistant to Mr. Oswald. The discussions which ensued for the next four days, were long, animated, and often vehement. The great struggle was upon the fisheries. Great Britain was willing to concede the use on the high seas as a privilege, whilst she denied it altogether within its three miles' jurisdiction on the coasts. America, on the other hand, claimed the former as a right, and asked for the privilege of the latter. Here was the place at which Mr. Adams assumed the greatest share of responsibility in the negotiation. He insisted upon placing the two countries exactly on a level in regard to the right to the fishery, a claim, the justice of which few, at this day, would be found to dispute. The energy and effect of his representations, on this point, are so well shown in his "Diary" as to render it unnecessary to dwell further on them here. He further claimed for his countrymen a liberty to dry and cure fish on the unsettled regions of British America, and a privilege of the same kind in the settled parts, with the consent of the proprietors.

These propositions he put in writing in a paper which, on the 29th, he proposed to the conference as an article to be inserted in the treaty.

No. 110.—1782, November 29: Letter, Mr. Strachey to Mr. Townshend.

PARIS, 29th Novr 1782

*Eleven at night*

SIR, A very few hours ago we thought it impossible that any treaty could be made. We have at last, however, brought matters so far to a conclusion that we have agreed upon articles, and are to meet to-morrow for the purpose of signing.

Enclosed are such of the articles as are altered, and an additional one which we mean as a security in case it be true that Bermuda is taken.

The article of the fishery has been particularly difficult to settle, as we thought the instructions were rather limited. It is, however, beyond a doubt that there could have been no treaty at all, if we had not adopted the article as it now stands. Mr. Fitzherbert was satisfied that it would not interfere with the French negotiation, and we all three concurred in opinion that this article, and all the others, as in the enclosed paper, should be concluded upon.

The 4th article, which was intended for the security of creditors before the war, is now extended to *all creditors*.

The 5th, regarding the refugees, is different from any of the modifications which you left to our choice. But we think it will meet with your approbation in several respects, especially as it is not attended with any secret article of exceptions. The words "rights and properties" are added to the word "estates," agreeably to your wish; and the supplemental article, relating to debts and marriage settlements (with the addition of *or otherwise*), is also inserted.

The 6th article, of general amnesty, after much debate, and all agreeing that our meanings were the same, was altered in words, but remains in substance as it stood before.

We attempted to have the 9th article in more explicit terms, but could not contend farther than as it now stands, without raising a suspicion of what we really meant, and it was evident that the American commissioners had yet received no advices concerning Bermuda.

That the treaty may be safely transmitted to America, it is proposed that you should send to Mr. Oswald a pass for the American packet, the "Washington," Captain Barney, and that the commissioners here should furnish you with an American pass for one of our packets.

As soon as the treaty is signed to-morrow, Mr. Oswald will dispatch a messenger with it, and I shall follow as expeditiously as my indifferent state of health will permit.

I have the honor to be with the greatest respect, Sir your most obedient and most humble servant

H. STRACHEY.

Rt. Honble THOS. TOWNSHEND &c &c &c.

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106 No. 111.—1782, November 30; December 6: Extracts from Mr. Adams' Diary.

. . . . From first to last I ever insisted upon it with the English gentlemen, that the fisheries and the Mississippi, if America was not satisfied in those points, would be the sure and certain sources of a

future war. I showed them the indispensable necessity of both to our affairs, and that no treaty we could make, which should be unsatisfactory to our people upon these points, could be observed; that the population near the Mississippi would be so rapid, and the necessities of the people for its navigation so pressing, that nothing could restrain them from going down, and if the force of arms should be necessary, it would not be wanting; that the fishery entered into our distilleries, our coasting trade, our trade with the Southern States, with the West India Islands, with the coast of Africa, and with every part of Europe, in such a manner, and especially with England, that it could not be taken from us, or granted us stingily, without tearing and rending; that the other States had staples; we had none but fish; no other means of remittances to London, or paying those very debts they had insisted upon so seriously; that if we were forced off at three leagues distance we should smuggle eternally; that their men-of-war might have the glory of sinking now and then a fishing schooner, but this would not prevent a repetition of the crime; it would only inflame and irritate and enkindle a new war; that in seven years we should break through all restraints and conquer from them the island of Newfoundland itself, and Nova Scotia too.

Mr. Fitzherbert always smiled, and said it was very extraordinary that the British ministry and we should see it in so different a light; that they meant the restriction, in order to prevent disputes and kill the seeds of war, and we should think it so certain a source of disputes, and so strong a seed of war; but that our reasons were such, that he thought the probability of our side.

I have not time to minute the conversations about the sea-cow fishery, the whale fishery, the Magdalen Islands, the Labrador coasts, and the coasts of Nova Scotia; it is sufficient to say, they were explained to the utmost of our knowledge, and finally conceded.

I should have noted before, the various deliberations between the English gentlemen and us, relative to the words "indefinite and exclusive" right, which the Count de Vergennes and M. Gérard had the precaution to insert in our treaty with France. I observed often to the English gentlemen, that aiming at excluding us from fishing upon the north side of Newfoundland, it was natural for them to wish that the English would exclude us from the south side; this would be making both alike, and take away an odious distinction; French statesmen must see the tendency of our fishermen being treated kindly and hospitably like friends, by the English on their side of the island, and unkindly, inhospitably, and like enemies, on the French side. I added, further, that it was my opinion, neither our treaty with the French, nor any treaty or cause to the same purpose, which the English could make, would be punctually observed; fishermen, both from England and America, would smuggle, especially the Americans in the early part of the spring before the Europeans could arrive; this, therefore, must be connived at by the French, or odious measures must be recurred to by them or us to suppress it, and, in either case, it was easy to see what would be the effect upon the American mind; they, no doubt, therefore, wished the English to put themselves upon as odious a footing, at least, as they had done.

Dr. Franklin said, that there was a great deal of weight in this observation, and the Englishmen showed plainly enough that they felt it.

*December 6.* . . . . He [Laurens] says there will be an outrageous clamour in England, on account of the fisheries and the loyalists; but what is done is irrevocable.

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No. 112.—1782, November 30: *Letter, Mr. Oswald to Mr. Townshend.*

PARIS, November 30, 1782.

SIR. I take this opportunity of Mr. Strachey to acknowledge the honour of your letters of the 22nd and 23rd instant,\* and to advise that we have at last come to an agreement with the American Commissioners as to the terms of the treaty. They are not exactly what were proposed by the draft which Mr. Strachey brought over with him; but are the best we could possibly obtain of them.

If we had not given way in the article of the fishery, we should have had no treaty at all, Mr. Adams having declared that he never would put his hand to any treaty, if the restraints regarding the 3 leagues and 15 leagues were not dispensed with, as well as that of denying his countrymen the privilege of drying fish on the unsettled parts of Nova Scotia.

Mr. Fitzherbert and Mr. Strachey finding this, and there being a discretionary power in Mr. Strachey's instructions regarding  
107 the whole of this article, as well in extent as manner, they thought it advisable to avail themselves of it, rather than send again to London on this critical occasion, for further instructions, which, although in the almost certain prospect of obtaining an assent to such dispensation might have been of bad consequence, not only in the loss of so much time, but in leaving the Commissioners in such humour, as in the interim, to have suggested some new demands under the head of one or more of the other articles, which might have been of worse consequence than that of giving up these restraints of fishery. One specimen of which we had yesterday, while sitting with them, and under hesitation on this subject, when one of those gentlemen, pulling a paper out of his pocket, proposed that His Majesty should recommend to his Parliament, to make provision for the payment of certain effects which had been seized by order of his generals, and entirely out of the line of the consequences of military irregularities, and such as they could bring undoubted proofs of, and which, he said, ought to be paid upon the same principle of justice as was urged in favour of the recovery of debts.

On these and other accounts, and being in a manner certain that, without an indulgence in this article of fishery, there would have been no treaty with America, the above-mentioned gentlemen thought it best to close with the Commissioners by admitting this article in the way they proposed, in which they not only had my concurrence, but I own I used the freedom to encourage and press them to give their consent; being of opinion that I would be under no difficulty in showing that the grant was not of that importance as to be put in comparison with the consequences of splitting with America at this time. Among other things, it occurred to me that if our caution in this particular regarded our marine, and an apprehension of its being

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\* 19th and 22nd instead of 22nd and 23rd.

abridged by this interference of the Americans to a greater extent in this trade, we might come to suffer much more by what the Commissioners insinuated, and indeed threatened, in case of a refusal, which was to pass an Act of Navigation, by which, after a certain time, all the ports of America should be shut against English ships, in so far as the exportation of their produce should be concerned.

And in the other view of the profits of the fishing trade, and our being deprived of such part of it as the Americans would gain by this admission, I was of opinion that, in leaving the fishing seaports in the west of England, I would not have far to go inland, to be satisfied that the loss by continuing the dispute sometime longer with the Americans, or even laying the foundation of a nominal grudge, would, ten times over, counter-balance the amount of the said loss; even supposing that the conditions of those restraints could be enforced, by keeping the Americans to their proper distances; which I am of opinion would be difficult if not doubtful. Or if attempted by our men-of-war on that station might be the means of bringing on quarrels of States, instead of being useful in preventing quarrels of fishermen, as one of the motives insisted on in justification of this refusal.

Some time after our giving up this article, one of those gentlemen came over to our lodging, and told us that if in this particular we had made any stretch beyond the limits of our instructions, they would in return do the same by theirs; and instead of confining the payment of debts to what preceded the year 1775, they would make all recoverable that were contracted since that period.

I have not to trouble you further on the subject, as Mr. Strachey can so well inform you of every particular of the progress of it. I will only beg leave, in so far as I was personally concerned, to express my acknowledgment, and the sincere satisfaction I felt upon this second appointment to that charge, which could not fail in relieving my mind of the anxious concern I must have naturally experienced upon the occasion; I had also the additional pleasure to promise upon the public receiving every benefit, in the conclusion of the business, which could be expected from his ability and indefatigable attention and assiduity, as to which any further information on my part would be ill-placed and unnecessary, so that I have only to subscribe myself.

Sir Your most obedient and most humble servant

RICHARD OSWALD.

No. 113.—1782, November 30: *Preliminary Articles of Treaty between Great Britain and the United States.*

ARTICLES agreed upon, by and between Richard Oswald Esquire, the commissioner of His Britannic Majesty, for treating of peace with the commissioners of the United States of America, in behalf of his said Majesty, on the one part; and John Adams, Benjamin Franklin, John Jay, and Henry Laurens, four of the commissioners of the said States, for treating of peace with the commissioner of his said Majesty, on their behalf, on the other part. To be inserted in, and to constitute the treaty of peace proposed to be concluded, between the Crown of Great Britain, and the said United States;



but which treaty is not to be concluded, until terms of a peace shall be agreed upon, between Great Britain and France; and His Britannic Majesty shall be ready to conclude such treaty accordingly.

Whereas reciprocal advantages, and mutual convenience are found by experience, to form the only permanent foundation of peace  
108 and friendship between States; it is agreed to form the articles of the proposed treaty, on such principles of liberal equity, and reciprocity, as that partial advantages, (those seeds of discord!) being excluded, such a beneficial and satisfactory intercourse between the two countries, may be established, as to promise and secure to both perpetual peace and harmony.

Article 1st. His Britannic Majesty acknowledges the said United States, vizt. New Hampshire, Massachusetts Bay, Rhode Island and Providence Plantations, Connecticut, New York, New Jersey, Pennsylvania, Delaware, Maryland, Virginia, North Carolina, South Carolina and Georgia to be free sovereign and independent States; that he treats with them as such; and for himself, his heirs and successors, relinquishes all claims to the government, property, and territorial rights of the same, and every part thereof; and that all disputes which might arise in future, on the subject of the boundaries of the said United States, may be prevented, it is hereby agreed and declared that the following are, and shall be their boundaries vizt.—

Article 2d. From the north west angle of Nova Scotia, vizt. that angle which is formed by a line drawn due north, from the source of St. Croix River to the highlands, along the said highlands which divide those rivers that empty themselves into the River St. Lawrence, from those which fall into the Atlantic Ocean, to the north-westernmost head of Connecticut River; thence down along the middle of that river to the 45th degree of north latitude; from thence by a line due west on said latitude, until it strikes the River Iroquois, or Cataraquy; thence along the middle of said river into Lake Ontario; through the middle of said lake, until it strikes the communication by water between that lake and Lake Erie; thence along the middle of said communication into Lake Erie; through the middle of said lake, until it arrives at the water communication between that lake and Lake Huron; thence along the middle of said water communication into the Lake Huron; thence through the middle of said lake to the water communication between that lake and Lake Superior; thence through Lake Superior northward of the Isles Royal and Phelipeaux, to the Long Lake; thence through the middle of said Long Lake, and the water communication between it and the Lake of the Woods, to the said Lake of the Woods, thence through the said lake to the most north-western point thereof, and from thence on a due west course to the River Mississippi; thence by a line to be drawn along the middle of the said River Mississippi, until it shall intersect the northernmost part of the 31st degree of north latitude. South, by a line to be drawn due east, from the determination of the line last mentioned, in the latitude of 31 degrees north of the equator, to the middle of the River Apalachicola, or Catahouche; thence along the middle thereof, to its junction with the Flint River; thence straight to the head of St. Mary's River, and thence down along the middle of St. Mary's River to the Atlantic Ocean. East, by a line to be drawn along the middle of the River St. Croix, from its mouth in the Bay of Fundy to its source; and

from its source directly north, to the aforesaid highlands which divide the rivers that fall into the Atlantic Ocean, from those which fall into the River St. Lawrence; comprehending all islands within twenty leagues of any part of the shores of the United States, and lying between lines to be drawn due east from the points where the aforesaid boundaries between Nova Scotia on the one part and East Florida on the other shall respectively touch the Bay of Fundy, and the Atlantic Ocean; excepting such islands, as now are, and heretofore have been within the limits of the said province of Nova Scotia.

Article 3d. It is agreed, that the people of the United States shall continue to enjoy unmolested the right to take fish of every kind on the Grand Bank, and on all the other banks of Newfoundland; also in the Gulf of St. Lawrence, and at all other places in the sea, where the inhabitants of both countries used at any time heretofore to fish. And also that the inhabitants of the United States shall have liberty to take fish of every kind on such part of the coast of Newfoundland, as British fishermen shall use, (but not to dry or cure the same on that island), and also on the coasts, bays, and creeks of all other of His Britannic Majesty's dominions in America, and that the American fishermen shall have liberty to dry and cure fish in any of the unsettled bays harbours and creeks of Nova Scotia, Magdalen Islands, and Labrador, so long as the same shall remain unsettled; but so soon as the same or either of them shall be settled, it shall not be lawful for the said fishermen to dry or cure fish at such settlement, without a previous agreement for that purpose with the inhabitants proprietors or possessors of the ground.

Article 4th. It is agreed that creditors on either side shall meet with no lawful impediment to the recovery of the full value in sterling money of all bonâ fide debts heretofore contracted.

Article 5th. It is agreed that the Congress shall earnestly recommend it to the legislatures of the respective States, to provide for the restitution of all estates, rights, and properties which have been confiscated, belonging to real British subjects; and also of the estates rights and properties of persons resident in districts in the possession of His Majesty's arms; and who have not borne arms against the said United States: And that persons of any other description shall have free liberty to go to any part or parts of any of the thirteen United States, and therein to remain twelve months unmolested in their endeavours to obtain the restitution of such of their estates, rights and properties as may have been confiscated; and that Congress shall also earnestly recommend to the several States a reconsideration and revision of all acts or laws regarding the premises, so as to render the said laws or acts perfectly consistent not only with justice and equity, but with that spirit of conciliation which on the return of the blessings of peace should universally prevail. And that Congress shall also earnestly recommend to the several States, that the estates rights and properties of such last mentioned persons shall be restored to them; they refunding to any persons who may be now in possession the bonâ fide price, (where any has been given,) which such persons may have paid on purchasing any of the said lands, rights, or properties since the confiscation.

109 And it is agreed that all persons who have any interest in confiscated lands, either by debts, marriage settlements or

otherwise, shall meet with no lawful impediment in the prosecution of their just rights.

Article 6th. That there shall be no future confiscations made, nor any prosecutions commenced against any person or persons, for or by reason of the part which he or they may have taken in the present war, and that no person shall on that account suffer any future loss or damage either in his person, liberty or property; and that those who may be in confinement on such charges, at the time of the ratification of the treaty in America, shall be immediately set at liberty, and the prosecutions so commenced be discontinued.

Article 7th. There shall be a firm and perpetual peace, between His Britannic Majesty and the said States, and between the subjects of the one and the citizens of the other, Wherefore all hostilities both by sea and by land shall then immediately cease; all prisoners on both sides shall be set at liberty, and His Britannic Majesty shall, with all convenient speed, and without causing any destruction or carrying away any negroes, or other property of the American inhabitants withdraw all his armies garrisons and fleets from the said United States, and from every port, place, and harbour within the same; leaving in all fortifications the American artillery that may be therein: and shall also order and cause all archives, records, deeds and papers belonging to any of the said States, or their citizens, which in the course of the war may have fallen into the hands of his officers to be forthwith restored and delivered to the proper States and persons to whom they belong.

Article 8th. The navigation of the River Mississippi from its source to the ocean, shall for ever remain free and open to the subjects of Great Britain and the citizens of the United States.

Article 9th. In case it should so happen that any place or territory belonging to Great Britain, or the United States, should be conquered by the arms of either, from the other, before the arrival of these articles in America, it is agreed that the same shall be restored, without difficulty, and without requiring any compensation.

Done at Paris, the thirtieth day of November, in the year One thousand seven hundred Eighty Two.

RICHARD OSWALD	(L. S.)
JOHN ADAMS	(L. S.)
B FRANKLIN	(L. S.)
JOHN JAY	(L. S.)
HENRY LAURENS.	(L. S.)

Witness

The Words [and Henry Laurens] between the fifth and sixth Lines of the first Page; and the Words [or carrying away any Negroes, or other Property of the American Inhabitants] between the seventh and eighth Lines of the eighth Page, being first interlined

CALEB WHITEFOORD Secretary to the British Commission  
W. T. FRANKLIN Secy to the American Commission

Separate Article.

It is hereby understood and agreed, that in case Great Britain at the Conclusion of the present War, shall recover, or be put in pos-

session of West Florida, the Line of north Boundary between the said Province and the United States, shall be a Line drawn from the Mouth of the River Yassous where it unites with the Mississippi due East to the River Apalachicola.

Done at Paris the thirtieth day of November, in the year One thousand Seven hundred and Eighty Two.

RICHARD OSWALD	(L. S.)
JOHN ADAMS	(L. S.)
B FRANKLIN	(L. S.)
JOHN JAY	(L. S.)
HENRY LAURENS.	(L. S.)

Attest

CALEB WHITEFOORD Secy to the British Commission

Attest

W. T. FRANKLIN Secy to the American Commission

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110 No. 114.—1782, *December 4: Extract from letter, Mr. Fitzherbert to Lord Shelburne.*

Private

PARIS *December 4th 1782.*

MY LORD. Your Lordship will have seen before this letter reaches you the signed copy of our conditional preliminary articles with America, and you will likewise have received from Mr. Strachey an ample detail of all the conferences upon that convention, and of the reasons which induced that gentleman and myself to concur in opinion with Mr. Oswald as to the expediency of signing it without waiting for further instructions. I can truly assure your Lordship that in regard to the fishery, no pains nor instances were spared in order to settle that article according to the ideas of the British cabinet, 1st by restraining the Americans to the fishery upon the Great Bank; 2d by restraining them (agreeably to the hint thrown out in your Lordship's letter to me of the 24th) merely to the cod-fishery; 3d by preventing them from drying their fish on the shores of Nova Scotia, and lastly by having the article so worded as that the fishery on the Great Bank should be stipulated for, not as a matter of right, but as a matter of grace and favour; but upon all these articles the Commissioners in general and particularly the eldest of them, Mr. Adams (who your Lordship knows is from New England) were absolutely inflexible. We however obtained, and I can assure your Lordship that it was not without difficulty, the exclusion of the American fishermen from drying upon Newfoundland, and from fishing on any part of that coast, excepting what we ourselves use, a clause, by which all complaints from this court of having been unfairly dealt with are effectually precluded. Upon the whole with regard to this American treaty I must take the liberty to deliver it to your Lordship as my opinion, that *all* the articles of it were, *as matters then stood*, the most favourable that could possibly have been obtained. I say, *as matters then stood*, because, had the negotiation been managed differently at its first setting out, it is not improbable that the

Commissioners might have been inclined to pay some consideration for what we call *our grant of*, and they *our acquiescence in*, American Independency. But I likewise apprehend that this consideration would have consisted partly in a more favourable boundary to the province of Canada, and partly in some more indulgence to the unfortunate loyalists, and not in any relaxation with regard to the fishery, Mr. Adams having declared throughout that it was absolutely impossible for him both on account of his positive instructions, and on account of the ideas which he knew were entertained in his province, to consent to that article under any other form but that which it at present wears. I cannot help saying one word more upon this last subject which is, that upon our urging, amongst other arguments, for secluding America from the coast-fishery, that if she were admitted to it, it would prove an endless source of disputes to the two nations, they held on the contrary that it would become a most powerful bond of connexion to unite us, and supported this doctrine by many plausible inductions of reasoning. . . . .

The EARL OF SHELBURNE

&c &c &c.

No. 115.—1782, December 4: *Letter, Comte de Vergennes to M. de Rayneval.*

VERSAILLES, December 4, 1782.

You had no idea, Monsieur, when you left this place, that the negotiation of the Americans was at the point of conclusion. I received the next morning a note from M. Franklin announcing that all was agreed upon, and was about to be signed. In fact the preliminary articles were signed that day on one side by Mr. Oswald, and on the other by the four American plenipotentiaries.

The translation of those preliminaries, which I here enclose, relieves me from the necessity of entering into any details of their contents. You will notice that the English buy the peace more than they make it. Their concessions, in fact, as much as to the boundaries as to the fisheries and the loyalists, exceed all that I should have thought possible. What can be the motive, that could have brought terms so easy, that they could have been interpreted as a kind of surrender? You are in a better way to discover than I, but what I can not help observing, and what I pointed out to M. Franklin, is that notwithstanding the reservation in these preliminary articles, that they are not to take effect till terms of peace are settled between England and France, yet their signature is none the less premature.

If love of peace has torn from the English Ministers the sacrifices that they so generously make to America, I must believe that that sentiment extending itself to all the objects of the war, the conditions of which you were bearer, must have been favorably received. May you be able to confirm us in this view. The news will be better received here than at Madrid, where, according to all our ideas, the cession of Minorca will cause extreme displeasure.

Upon the hypothesis which is most satisfactory to us, and the most hopeful, we have different points to discuss with the English Ministers; first of all, their official declaration of their concessions to us. The perusals of the preliminaries of the Americans will  
 111 make you feel how important it is that their concessions should be free from ambiguity in respect to the exclusive exercise of our rights of fishing. The Americans acquiring the right to fish in common with the English fishermen, they should have no occasion or pretext for troubling us.

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No. 116.—1772: *Article Proposed and Read to the Commissioners before signing the Preliminary Articles.*<sup>a</sup>

It is agreed that his Britannic majesty will earnestly recommend it to his Parliament to provide for and make a compensation to the merchants and shop-keepers of Boston whose goods and merchandise were seized and taken out of their stores, warehouses, and shops by order of General Gage and others of his commanders and officers there; and also to the inhabitants of Philadelphia, for the goods taken away by his army there; and to make compensation also for the tobacco, rice, indigo, and negroes, &c., seized and carried off by his armies under Generals Arnold, Cornwallis, and others from the States of Virginia, North and South Carolina, and Georgia, and also for all vessels and cargoes belonging to the inhabitants of the said United States which were stopped, seized, or taken either in the ports or on the seas, by his governors or by his ships of war before the declaration of war against the said States.

And it is further agreed that his Britannic majesty will also earnestly recommend it to his Parliament to make compensation for all the towns, villages, and farms burnt and destroyed by his troops or adherents in the said United States.

#### FACTS.

There existed a free commerce upon mutual faith between Great Britain and America. The merchants of the former credited the merchants and planters of the latter with great quantities of goods on the common expectation that the merchants, having sold the goods, would make the accustomed remittances; that the planters would do the same by the labor of their negroes and the produce of that labor, tobacco, rice, indigo, &c.

England, before the goods were sold in America, sends an armed force, seizes those goods in the stores, some even in the ships that brought them, and carries them off; seizes also and carries off the tobacco, rice, and indigo, provided by the planters to make returns, and even the negroes, from whose labor they might hope to raise other produce for that purpose.

Britain now demands that the debts shall nevertheless be paid.

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<sup>a</sup> . . . . This article, and the facts which follow, were drawn up by Dr. Franklin, and intended to be insisted on in case the British Commissioners persevered in their demands respecting the fisheries. See Franklin to Livingston, December 5, 1782, *infra*. . . . [Rev. Dip. Corr., vol. v, p. 842.]

Will she, can she, justly refuse making compensation for such seizures?

If a draper who had sold a piece of linen to a neighbour on credit should follow him, take the linen from him by force, and then send a bailiff to arrest him for the debt, would any court of law or equity award the payment of the debt without ordering a restitution of the cloth?

Will not the debtors in America cry out that if this compensation be not made they were betrayed by the pretended credit and are now doubly ruined, first by the enemy and then by the negociators at Paris, the goods and negroes sold them being taken from them, with all they had besides, and they are now to be obliged to pay for what they have been robbed of?

No. 117.—1782, December 5: Extract from letter, Dr. Franklin to Mr. Livingston, United States Secretary of State.

. . . . . Much of the summer has been taken up in objecting to the powers given by Great Britain and in removing those objections. The using any expressions that might imply an acknowledgement of our independence, seemed at first industriously to be avoided; but our refusing otherwise to treat at length induced them to get over that difficulty, and then we came to the point of making propositions. Those made by Mr. Jay and me before the arrival of the other gentlemen, you will find in the paper No. 1, which was sent by the British plenipotentiary to London for the King's consideration. After some weeks, as under-secretary, Mr. Strachey arrived, with whom we had much contestation about the boundaries and other articles which he proposed and we settled; some of which he carried to London, and returned with the propositions, some adopted, others omitted or altered, and new ones added, which you will see in paper No. 2. We spent many days in disputing, and at length agreed on and signed the preliminaries, which you will see by this conveyance.

112 The British minister struggled hard for two points, that the favors granted to the royalists should be extended, and our fishery contracted. We silenced them on the first by threatening to produce an account of the mischief done by those people; and as to the second, when they told us they could not possibly agree to it as we requested it, and must refer it to the ministry in London, we produced a new article to be referred at the same time, with a note of facts in support of it, which you have, No. 3. Apparently, it seemed, that to avoid the discussion of this they suddenly changed their minds, dropped the design of recurring to London and agreed to allow the fishery as demanded. . . . .

No. 118.—1782, December 5-14: Extract from letter, Mr. Franklin to Mr. Livingston.

PASSY, December 5. 1782.

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You will find in the preliminaries some inaccurate and ambiguous expressions that want explanation, and which may be explained in

the definitive treaty; and as the British Ministry excluded our proposition relating to commerce, and the American prohibition of that with England may not be understood to cease merely by our concluding a treaty of peace, perhaps we may then, if the Congress shall think fit to direct it, obtain some compensation for the injuries done us as a condition of our opening again the trade. Every one of the present British ministry has, while in the minority, declared the war against us unjust; and nothing is clearer in reason than that those who injure others by an unjust war should make full reparation. They have stipulated, too, in these preliminaries, that in evacuating our towns they shall carry off no plunder, which is a kind of acknowledgment that they ought not to have done it before.

The reason given us for dropping the article relating to commerce was that some statutes were in the way which must be repealed before a treaty of that kind could be well formed, and that this was a matter to be considered in Parliament.

They wanted to bring their boundary down to the Ohio and to settle their loyalists in the Illinois country. We did not choose such neighbours.

We communicated all the articles, as soon as they were signed, to Count de Vergennes (except the separate one), who thinks we have managed well, and told me that we had settled what was most apprehended as a difficulty in the work of a general peace, by obtaining the declaration of our independency.

DECEMBER 14.

I have this day learnt that the principal preliminaries between France and England are agreed on, to wit:

1. France is to enjoy the right of fishing and drying on all the west coast of Newfoundland, down to Cape Ray. Miquelon and St. Pierre to be restored, and may be fortified.

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No. 119.—1782, *December 14: Letter, Messrs. Adams, Franklin, Jay, and Laurens to Mr. Livingston.*

*PARIS, December 14, 1782.*

SIR: We had the honour to congratulate Congress on the signature of the preliminaries of a peace between the crown of Great Britain and the United States of America, to be inserted in a definitive treaty so soon as the terms between the crowns of France and Great Britain shall be agreed on. A copy of the articles is here enclosed, and we can not but flatter ourselves that they will appear to Congress, as they do to all of us, to be consistent with the honor and interest of the United States; and we are persuaded Congress would be more fully of that opinion if they were apprized of all the circumstances and reasons which have influenced the negotiation. Although it is impossible for us to go into that detail, we think it necessary, nevertheless, to make a few remarks on such of the articles as appear most to require elucidation.

#### REMARKS ON ARTICLE 2, RELATIVE TO BOUNDARIES.

The court of Great Britain insisted on retaining all the territories comprehended within the Providence of Quebec by the act of Parlia-



ment respecting it. They contended that Nova Scotia should extend to the river Kennebec; and they claimed not only all the lands in the western country and on the Mississippi which were not expressly included in our charters and governments, but also all such lands within them as remained ungranted by the King of Great Britain. It would be endless to enumerate all the discussions and arguments on the subject.

We knew this court and Spain to be against our claims to the western country, and having no reason to think that lines more favorable could ever have been obtained, we finally agreed to those

described in this article; indeed they appear to leave us little  
 113 to complain of and not much to desire. Congress will observe that, although our northern line is in a certain part below the latitude of forty-five, yet in others it extends above it, divides the Lake Superior, and gives us access to its western and southern waters, from which a line in that latitude would have excluded us.

#### REMARKS ON ARTICLE 4, RESPECTING CREDITORS.

We have been informed that some of the States had confiscated British debts; but although each State has a right to bind its own citizens, yet in our opinion it appertains solely to Congress, in whom exclusively are vested the rights of making war and peace, to pass acts against the subjects of a power with which the Confederacy may be at war. It therefore only remained for us to consider whether this article is founded in justice and good policy.

In our opinion no acts of government could dissolve the obligations of good faith resulting from lawful contracts between individuals of the two countries prior to the war. We knew that some of the British creditors were making common cause with the refugees and other adversaries of our independence; besides, sacrificing private justice to reasons of state and political convenience is always an odious measure; and the purity of our reputation in this respect in all foreign commercial countries is of infinitely more importance to us than all the sums in question. It may also be remarked that American and British creditors are placed on an equal footing.

#### REMARKS ON ARTICLES 5 AND 6, RESPECTING REFUGEES.

These articles were among the first discussed and the last agreed to. And had not the conclusion of this business at the time of its date been particularly important to the British administration, the respect which both in London and Versailles is supposed to be due to the honor, dignity, and interest of royalty would probably have forever prevented our bringing this article so near to the views of Congress and the sovereign rights of the States as it now stands. When it is considered that it was utterly impossible to render this article perfectly consistent both with American and British ideas of honor, we presume that the middle line adopted by this article is as little unfavorable to the former as any that could in reason be expected.

As to the separate article, we beg leave to observe that it was our policy to render the navigation of the river Mississippi so important to Britain as that their views might correspond with ours on that

subject. Their possessing the country on the river north of the line from the Lake of the Woods affords a foundation for their claiming such navigation. And as the importance of West Florida to Britain was for the same reason rather to be strengthened than otherwise, we thought it advisable to allow them the extent contained in the separate article, especially as before the war it had been annexed by Britain to West Florida, and would operate as an additional inducement to their joining with us in agreeing that the navigation of the river should forever remain open to both. The map used in the course of our negotiations was Mitchell's.

As we had reason to imagine that the articles respecting the boundaries, the refugees, and fisheries did not correspond with the policy of this court, we did not communicate the preliminaries to the minister until after they were signed, and not even then the *separate article*. We hope that these considerations will excuse our having so far deviated from the spirit of our instructions. The Count de Vergennes, on perusing the articles, appeared surprised, but not displeased, at their being so favorable to us.

We beg leave to add our advice that copies be sent us of the accounts directed to be taken by the different States of the unnecessary devastations and sufferings sustained by them from the enemy in the course of the war. Should they arrive before the signature of the definitive treaty, they might possibly answer very good purposes.

With great respect, we have the honor to be, sir, your most obedient and most humble servants,

JOHN ADAMS,  
B. FRANKLIN,  
JOHN JAY,  
HENRY LAURENS.

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No. 120.—1782, December 14: *Extract from letter, Mr. Jay to Mr. Livingston.*

PARIS, December 14, 1782

DEAR SIR: From our preliminaries and the King's speech, the present disposition and system of the British Court may, in my opinion, be collected. Although particular circumstances constrained them to yield us more than perhaps they wished, I still think they meant to make (what they thought would really be) a satisfactory peace with us. In the continuance of this disposition and system too much confidence ought not to be placed, for disappointed violence and mortified ambition are certainly dangerous foundations to build implicit confidence upon; but I cannot forbear thinking that we ought not, in the common phrase, to throw cold water upon it by improper exultation, extravagant demands, or illiberal publications; should such a temper appear, it would be wise to discountenance it. It is our policy to be independent in the most extensive sense, and to observe a proper distance towards all nations, minding our own business, and not interfering with, or being influenced by, the views of any, further than they may respect us. . . .

114 No. 121.—1782, *December 24: Extract from Madison's Report of Debates in Congress.*TUESDAY, *December 24, 1782.*

The letter from Mr. Jay, enclosing a copy of the intercepted letter from Marbois, was laid before Congress. The tenor of it, with the comments of Mr. Jay, affected deeply the sentiments of Congress with regard to France. The policy, in particular, manifested by France of keeping us tractable by leaving the British in possession of posts in this country awakened strong jealousies, corroborated the charges on that subject, and with concomitant circumstances may engender the opposite extreme of the gratitude and cordiality now felt towards France; as the closest friends in a rupture are apt to become the bitterest foes. Much will depend, however, on the course pursued by Britain. The liberal one Oswald seems to be pursuing will much promote an alienation of temper in America from France. It is not improbable that the intercepted letter from Marbois came through Oswald's hands. If Great Britain, therefore, yields the fisheries and the back territory, America will feel the obligation to her, not to France, who appears to be liberal as to the first and favourable to Spain as to the second object, and consequently has forfeited the confidence of the States interested in either of them.

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No. 122.—1782, *December 30: Extract from letter, Mr. Livingston to Mr. Jay.*PHILADELPHIA, *December 30, 1782.*

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Whatever the sentiments of the Count de Vergennes may be with respect to the claims of Spain, in a letter which I have seen he treats them, as well as ours, as chimerical, and declares that he does not mean to interfere in them. You can judge of the sincerity of this declaration. If otherwise, I am at a loss to determine why he treats them so lightly in his letters, or why those letters were communicated to me. For my part I believe their situation with respect to Spain is very delicate and that they are embarrassed by her demands. I mention these matters that you may judge how far language held here and with you agrees.

As to the letter of 566-166-143, I am by no means surprised at it. He always endeavored to persuade us that our claim to the fisheries was inadmissible. Yet this is remarkable, and I think evinces the design of France to serve us even on that point. The advice (had the contrary been their object) is certainly judicious, yet we find that no steps have been taken in consequence of it. On the contrary, we have been told in a formal communication that the King will obtain everything for us that circumstances will admit, and that nothing but sad necessity shall induce him to relinquish any of these objects which we have at heart, and that he does not imagine from the then view of his affairs that such necessity will exist. This communica-

tion was made on the 23d of November, 1781, and has been renewed informally at different periods. This fact may be of use. You have a right to avail yourself of this engagement if necessary, since Congress, relying upon it, have made no alteration in their instruction, notwithstanding their success in Virginia. This letter of 566-166-143 [Marbois] and the conduct of the court marks the distinction between a great politician and a short-sighted one. France can, by prohibiting the importation of fish, supply herself. She can not navigate so cheaply as to do more. Our exclusion would only be a benefit to England, and the ill-will it would create, the disputes it would give birth to, would, in the course of a few years, obliterate the memory of the favors we have received. England, by sacrificing a part of her fisheries and protecting us in the enjoyment of them, would render herself necessary to us. Our friendship would be transferred to her, and France would in the end be considered a mutual enemy.

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No. 123.—1783, February 5: *Extract from letter, Mr. Adams to Mr. Livingston.*

PARIS, February 5, 1783.

SIR: The resolution of Congress of the 12th of July, 1781, "that the commission and instructions for negotiating a treaty of commerce between these United States and Great Britain, given to the Honorable John Adams on the 29th day of September, 1779, be, and they are hereby, revoked," was duly received by me in Holland; but no explanation of the motives to it, or the reasons on which it was founded, was ever transmitted to me by Congress, or the committee of Foreign Affairs, or any individual member, nor has anybody in Europe or America ever once attempted, that I know of, to guess at the reason. Whether it was intended as a punishment to me, or with a charitable design not to lead me into temptation; whether it was intended  
115 as a punishment to the English for their insolence and barbarity; whether it was intended to prevent or remove suspicions of allies, or the envy and green-eyed jealousy of co-patriots, I know not. Of one thing, however, I am fully satisfied, that Congress had reasons, and meant well; but whether those reasons were founded on true or mistaken information, I know not.

When I recollect the instructions, which were given and revoked with that commission, I can guess, and only guess, at some considerations which might, or might not, operate with Congress. In these instructions, Congress determined,

1st. That the common right of fishing should in no case be given up.

2dly. That it is essential to the welfare of all these United States, that the inhabitants thereof, at the expiration of the war, should continue to enjoy the free and undisturbed exercise of their common right to fish on the banks of Newfoundland, and the other fishing banks and seas of North America, preserving inviolate the treaties between France and the said States, &c.

3dly. "That our faith be pledged to the several States, that without their unanimous consent no treaty of commerce shall be entered into, nor any trade or commerce whatever carried on with Great Britain, without the explicit stipulation hereinafter mentioned. You

are, therefore, not to consent to any treaty of commerce with Great Britain, without an explicit stipulation on her part not to molest or disturb the inhabitants of the United States of America, in taking fish on the banks of Newfoundland, and other fisheries in the American seas, anywhere, excepting within the distance of three leagues of the shores of the territories remaining to Great Britain at the close of the war, if a nearer distance can not be obtained by negotiation. And in the negotiation you are to exert your most strenuous endeavours to obtain a nearer distance in the Gulf of St. Lawrence, and particularly along the shores of Nova Scotia; as to which latter we are desirous that even the shores may be occasionally used for the purpose of carrying on the fisheries by the inhabitants of these States."

These instructions are very decisive in favour of our indubitable right to the fisheries; and it is possible that Congress might be of opinion, that commerce would be the strongest inducement to the English to make peace, and at the same time that there was something so naval in the fisheries, that the dread of acknowledging our right to them would be the strongest obstacle in the way of peace. They might think, too, that peace was of more importance to the United States than a British acknowledgement of our right to the fisheries, which, to be sure, would have been enjoyed by our people in a good degree without it.

Reasonings like these might influence Congress to revoke the commission and instructions in question. But whatever probability there might appear in them at that time, experience has since shown that they were not well founded. On the contrary, arguments have been found to convince the British ministers themselves, that it was the interest of their King and country, not only to acknowledge the American right to the fisheries, but to encourage the unrestrained exercise of it. These considerations, therefore, can be no longer of any weight against a treaty of commerce with Great Britain, or against accrediting a minister to the court of St. James.

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No. 124.—1783, February 10: Letter, Mr. Strachey to Mr. Fitzherbert.

WHITEHALL, 10th Feb. 1783.

DEAR SIR: You will hardly be able to suggest to yourself a reason for my long silence since the receipt of your very kind letter of the 19th December. The truth is, I wished to have something worth communicating, and I hoped to see that letter of Mr. ——— which you say is strictly my property, and upon which you conclude I shall make reflexions—But, from the time I wrote last, I have known little of the sentiments of our Great Men without the Walls of my Office—Indeed I have never had a material Word from Lord Shelburne, since the Day of my Return from Paris, except about a week afterwards, at the King's Levee, when he took occasion to say that he had considered again the Fishery Article, and was convinced that it was perfectly right, and that in all other respects we had given him the most *distinct and explicit satisfaction*. With regard to the Letter you allude to, as my property, I have never seen it—There may also be other Letters from the same Person, addressed to me, but I have

heard of none—Why they are concealed from me, I neither know nor care.

As to the Peace it seems to be generally relished, though a Clamor has been raised by the Canada (or Fur) Merchants on account of the Posts, Forts and Carrying Places being all on the American side of the Boundary Line—and a Storm is gathering from the Quarter of Refugees. The first is of no consequence, but the last may be serious if America does not come up to the full Intent of the 5th Article. If I had half an hour's conversation with you, I should say a great deal upon that point, which I think improper to commit to Paper.

As to what is more particularly *Your Treaty*, the Loss of Tobago, East and West Florida, is discussed principally upon Grounds of private Interest. But the real public Grievance is, that the Cession of East Florida obliges us to remove thousands of Refugees and their Negroes who had gone thither as an asylum from Georgia and Charles Town, and might have been advantageously settled there in the event of America not restoring them their Estates. But in general I think the Treaties with France and Spain have very few opponents. One great question I suppose will be whether G. B. was not in a condition to entitle her to better terms? But then it ought to be considered that without concluding with America we should have had no  
116 Peace at all and if we had not concluded with America when we did, were we likely to have had better or worse terms on any subsequent negotiation with her?

All the Preliminaries will be taken into consideration by Parliament next Monday—or thereabouts—for the day, though named, is not absolutely fixed. And I am really sorry to whisper to you, that I think Administration is upon very unsafe ground. The Fox, or Rockingham Party, are our adversaries, the North Party not less so: If these two should happen to join in any one point of the Peace, in the House of Commons, we must be beat—And that is so probable, that I see no Salvation for Lord Shelburne, unless he makes some Coalition (of which I see no shadow) in a very few days.

Lord Keppel you know has resigned, and Lord Howe has succeeded him. Whether the Duke of Richmond, connected as he is with Keppel and Fox, will continue, is rather equivocal—Excepting Lord Howe, who is my most particular friend, I know none but Mr. Townshend—He is a True Man—So I believe is Lord Grantham—and Mr. Pitt.

I have not continued to send you the Morning Chronicle because Mr. Sneyd informed me that he sent them regularly..

I have this moment read a Copy of a Petition intended to be presented to the House of Commons from the Loyalists, saying that the 5th Article will not have any effect in their favor, and therefore praying Compensation for their Losses. My Idea is that the *earnest* Recommendation of Congress, is equivalent to our King's Recommendation to Parliament, and that all the Refugees except the few who are particularly obnoxious, will recover their Estates—I have not time to write more, on this, or any other subject—About ten days hence, the great political scene will open and then you shall hear fully tho' perhaps hastily from

Dear Sir, Yours most truly,

H. STRACHEY.

Mr. Townshend desires me to insert his best Compliments and to say that he received your letter by Monsr. de Moustier, but that he has hitherto been prevented by hurry of business from paying him all the due Attention.

No. 125.—1782, December 5, to 1783, February 21: *Debates in British Parliament, being excerpts from the Parliamentary History of England in reference to the preliminary Treaty between the United Kingdom and the United States of the 30th November, 1782.*

[The King's Speech on the opening of the session (5th December, 1782) referred to the preliminary articles of peace in the following words:—]

" . . . . I lost no time in giving the necessary orders to prohibit the further prosecution of offensive war upon the continent of North America. Adopting, as my inclination will always lead me to do, with decision and effect, whatever I collect to be the sense of my Parliament and my people; I have pointed all my views and measures, as well in Europe as in North America, to an entire and cordial reconciliation with those colonies. . . . "

[The following is from the reply to the address adopted by the House of Lords:—]

" . . . . It is with the sincerest gratitude we acknowledge the sacrifice which your Majesty has been graciously and affectionately pleased to make to the wishes and opinions of your people, . . . . we acknowledge likewise your Majesty's constant care . . . . and in a particular manner for your Majesty having been graciously pleased to direct your measures towards promoting a cordial reconciliation between Great Britain and America. . . . "

[In the debates in the Lords on the address of thanks Lord *Hawke* said:—]

" . . . . Since then, such is the relative situation of each respective country, Ministers have certainly acted wisely in resting the connection of Great Britain and America, on the permanent bases of affection, consanguinity, religion and mutual interest. . . . "

The Earl of *Shelburne* said, . . . .

He had opposed and reprobated those Spanish measures, session after session; he had deprecated the vengeance of Ministers: he had unceasingly endeavoured to preserve some little remains of the friendship in America for this country: some atom or spark from which he had hoped, and did still hope, to re-kindle a mutual affection, before all the feelings, passions and habits of that country became absorbed in the politics and interests of France. . . . "

[The following is from the reply to the address adopted by the House of Commons (5th December, 1782):—]

" . . . . We beg leave to acknowledge, with sincere and hearty thanks, your Majesty's royal care and attention to the important and critical state of public affairs since the last session, and particularly for having been graciously pleased to direct your measures to promote a cordial reconciliation between Great Britain and America. . . . "

[In the debate in the Commons on the address the Honourable *Philip Yorke* said:—]

. . . . Nothing, then, remained to be done but to obtain peace; not by making war, for that was prohibited, but by making concessions; and no concession was likely to be deemed sufficient, but the opening of a treaty with America, upon the footing of a free and independent State. But at the time that His Majesty, for the sake of peace, and for the sake of relieving this country from the heavy burthens under which it labours, has made so great a dismemberment of the British Empire, he consoles himself with a well-grounded hope, that other motives than those of dependency, may tend to connect the two countries in a bond of permanent union. It is to be hoped, that a people speaking the same language, educated in the same religion, of the same habits, and of the same manners, may prefer a commercial connection with this country; and that Great Britain may still enjoy a larger share of the American trade than any other nation in Europe, upon fair and liberal principles of commerce.

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*Mr. Bankes* . . . .

In obtaining this, the hon. gentleman was glad, that no sacrifice would be made in granting the independence of America. By granting the independence of America, Great Britain would give up nothing. America had long been independent, and it was not possible for us to make her more so. But although so great a dismemberment was made, he trusted the connection between Great Britain and America would not be at an end. America talked the same language, and had her interest too strongly interwoven with that of Great Britain, not to make them for ever one and the same people, and give to her the greatest part of her commerce.

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*Mr. Fox* said, . . .

There were some expressions in the speech, . . . much as he disliked these expressions, he was as much pleased with those, in which His Majesty indulges the philosophic speculation of prospects of future connection with America, from similarity of language, manners, religion, and laws: . . . surely his right hon. friend did not mean to defraud his master of the merit of conciliating the hearts of the Americans, and binding them to this country by expressions of grace and kindness. . . .

[On the 27th January, 1783, the provisional articles with America were presented to Parliament, and on the 17th February the Earl of *Pembroke* in the House of Lords moved an address to the King:—]

“ . . . . To express in the most grateful manner to His Majesty our satisfaction, that His Majesty has, in consequence of the powers entrusted to him, laid the foundation by the provisional Articles with the States of North America, for a treaty of peace, which, we trust, will insure perfect reconciliation and friendship between both countries. . . . ”

The Earl of *Carlisle* said, . . .

In the advancement of the negotiation, if it had been urged on the part of the United States, that the retaining large tracts of country behind them to plant with persons of different political principles, might be little better than laying the foundation of new war and new



disturbances; I know not what parts of the Empire this country might, in that case, have thought proper to disunite, but if tired of colonisation, she had relinquished the fertile banks of the Ohio, the paradise of America, it must have been to have rendered more secure the safety of those persons, for whom she was so deeply interested. If this appears to any one right to have been done, let us see what has been done?

When the minds of the people of England were hardly brought to bear the idea of establishing the American independency, but when the progressive disasters of the war made it seem to be unavoidable, a thunder-cloud breaks upon us on a sudden, and we are told that a tract of country, equal almost to a third of Europe, is added to that which we were in some measure prepared to lose. All Canada is in fact lost to Great-Britain. All the country, from the Alegany Mountains to the Mississippi lost. All the forts, settlements, carrying places, towns, inhabitants upon the lakes, lost. The peltry and fur trade lost. Twenty-five nations of Indians made over to the United States, together with the three principal forts of Niagara, Michilimakinac, and Detroit, which last, I understand, has 10,000 inhabitants around it. All opportunity of procuring masts, (at least by any thing that appears) from Penobscot-bay, &c. and all this without the smallest apparent advantage resulting to Great Britain in return for these amazing concessions; not even that solitary stipulation which our honour should have made us insist upon, and have demanded with unshaken firmness, a place of refuge for those miserable persons before alluded to, some port, some haven, for those shattered barks to have been laid up in quiet. . . .

But we keep the navigation of the Mississippi! And so we might say that we keep that of the Rhone or the Rhine. We are not possessed for 3,000 miles of a single acre of its shores; and West Florida, where the Mississippi meets the sea, is by the treaty in the hands of the Spaniards. To what sort of understandings is this fallacy addressed, or for what description of rational beings is this delusion calculated? . . . .

After a summary recapitulation of his arguments, the noble Earl moved his amendment, by which the original motion ran thus: "To return our thanks to His Majesty for the communication of the preliminary articles of peace, and for having put a stop to the calamities of war, by a peace, which being concluded, we must consider as binding, and not to be infringed without a violation of the national faith. To assure His Majesty that we feel, in the strongest manner, the obligation of affording every relief, that can alleviate the distresses of those deserving subjects, who have exposed their lives and fortunes for the support of Great Britain; and at the same time, we cannot help lamenting the necessity, which bids us subscribe to articles, which, considering the relative situation of the belligerent Powers, we must regard as inadequate to our just expectations, and derogatory to the honour and dignity of Great Britain.

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Lord Walsingham . . . .

To the boundaries established by the provisional articles he had four objections, 1. That thereby the Province of Canada was rendered insecure; 2. That the fur trade was by this means totally and absolutely lost; 3. That several hundred millions of acres of territory

were ceded; but above all, 4. That all faith was broken with the Indians who inhabit that part of the country; the trade was lost because we could no longer command it. It must now, said his Lordship, depend on accident, rivalry, jealousy, caprice, self-interest, even on mutual friendship, to be permanent.

The noble Lord gave a view of the present and past state of the Province of Canada; by which he showed that in this new regulation of boundaries the lakes were given up, and the harbours without even a stipulation for a free navigation: the forts which had cost the nation so immense a sum were also delivered up. After expatiating on the impolicy of this conduct, he asked, why if the forts were to be given up, it was not at least stipulated that they should be dismantled—why not take care that when they are to be put into the hands of a rival they shall be as little injurious to us as possible? As it was, they were delivered up, and through them we were to hold our Canada trade in future at the mercy of the United States. He particularly mentioned the important fort of Missilimachinac; this was the rendezvous for the trade of the whole province, and this was forty miles within the American line of boundary; the communication between the Lakes Superior and Huron was delivered up; and we were to navigate the lakes also on the most disadvantageous side; the current set in on our shore, and therefore that side was of no use to traders; the eddy set in upwards on their shore. The Lake Michigan was commanded by Missilimachinac: he dwelt on the use and the importance of that lake; the Indians subsist around it, there they hunt, and there the skins are to be purchased; it communicates with the Mississippi, and its value was therefore very great; nothing could be so absurd as to stipulate for the navigation of the Mississippi, and yet cut off all communication with it. What was meant by the navigation of Mississippi as agreed on in the treaty, he professed he could not tell; it would have been a valuable provision if properly managed; if we had had the possession of the lakes; if the communication had been preserved to us, it would have been truly beneficial; for its means of internal navigation were immense from its tributary lakes and rivers. On the whole, he said, the precarious state of the fur trade would be the means of its total annihilation. Merchants would not adventure on a traffic so clogged, and he begged to inform noble Lords that this was a very important branch of our commerce, the exports from hence to Canada were 500,000*l.* per annum; and the imports nearly half as much.

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With respect to the Indian nations, the Iroquois were cut off from us for ever, as well as all their tributaries and allies. The cruelty and perfidy of this fact was beyond his feeble powers of description: they engaged in all our wars; in the present contest, they were invited by the most flattering and seductive professions. General Burgoyne's proclamation promised them rewards in proportion to their zeal. They accepted the condition; in their answer they promised obedience; they refused the offers made them by America; they served us well, as a testimony of which he begged their Lordships to refer to the letters of Colonel Butler. What was the reward which they were to receive? What was their present situation? Their calamities were little known, but they were unspeakable. They were driven completely from their country, and were encamped, 4,000 in

number, at Niagara, at that very moment, living at the expense of Great Britain. They cost the nation an amazing sum. In the name of policy, why not stipulate for their return and peaceable possession of their native lands? Humanity, interest, policy required it. There was a stipulation of the kind in the 15th article of the treaty of Utrecht; and the same thing was done in the capitulation of Quebec. By the treaty of Utrecht they were called the five nations under the dominion of the British Crown; but we were peculiarly bound to protect them, by the good faith and the obligation, of our own treaties with them. In 1701, they made over their dwelling and hunting lands to England, on the solemn condition that they should be protected for ever. In 1726, the treaty was renewed; the King accepted it in trust for ever, and pledged himself to defend it. Again, in 1746, the compact was repeated at different Congresses; and in a variety of meetings the most solemn assurances had been given to these unhappy people from the Crown, that they should be for ever protected. Who would approve of the restitution of Albany? and who, that had any feeling for men of honour, would approve of our giving up and abandoning Sir William Johnson? Above 20,000/  
 119 sterling of his estates were confiscated already; his voluntary zeal in our service, his conduct in heading the Indians, in order to moderate their cruelty, was laudable in the extreme; and the effects that he had produced by his influence among them, were spoken of in the highest terms of praise. How different was his reward now, and in the last war! At that period the House of Commons voted Sir William Johnson a reward in money, and they addressed the King to confer on him a mark of honour which he now bears.

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He now came to his last point, the loyalists. On this subject, the noble Earl who moved the amendment, had spoken with so much feeling, that he believed he had made a very strong impression on every one who had heard him. He assured their Lordships, that the noble Earl had most forcibly aroused his feelings, and he could neither think nor speak of the dishonour of our treatment of those deserving men with patience. Their claim upon us was self-evident; they had been invited to join us by our own acts; it was a parliamentary war, and therefore it was the more incumbent on the legislature to protect them. The Crown had no separate interest in the war; the addresses to the King from every part of the country, proved that the people of England considered the war as necessary, since its object was the preservation of our just dominion. Parliament should be consistent. He begged their Lordships to look at the resolutions of Parliament in 1766, and see by them, if, in order to be consistent, they ought not to have observed a very different conduct in regard to the loyalists. The noble Lord pointed out the fallacy of the fifth and sixth articles, and he asked if any one of their Lordships entertained just expectations, as the address stated, that these articles would be complied with? The address stated, that Congress had undertaken to recommend it to the provincial assemblies, and it was no such thing; Congress has not yet ratified the treaty: perhaps they had said, that they would ratify the treaty; but it should have been stated on the face of it, that the American commissioners had produced their full powers as the European ministers had done. These full powers ought not

to be mere form of words—not matters of course—but a solemn promise to accept, perform, and ratify all that should be done in their name. There were two propositions contained in the fifth and sixth articles; the security of the persons of those to whom the articles relate, and restitution of their estates. He begged their Lordships to see how the effect would be in both cases. The treaty was not superior to law, and that there were positive laws enacted by the provincial assemblies, directly contrary to these provisions, he need not inform their Lordships. He quoted several of their laws of banishment—declaring persons by name aliens—forbidding their return—their punishment if they did return, being, that they were seized by the sheriff of the county where they were seized, and by him made over to the board of war: by their sentence, they were to be transmitted to some of the British dominions; and if they should after this presume to return, they were to be punished with death, like felons. While these laws were in existence, the sheriffs must obey them; they could not take cognisance of the treaty—the laws are compulsory on them—they have no discretion—and therefore it was nugatory to stipulate for these unhappy men going into the colonies, and staying for twelve months to endeavour to regain their estates. Beside the law of banishment, the law of confiscation would operate against these unhappy men; the noble Lord pointed out its provisions, and said that it was recommended by Congress originally: under this law the effects of the loyalists were sold for public use; the legislatures of the respective provinces had warranted the titles to the purchasers for ever.

Suppose, then, that the possessors of these estates will not part with them; how can the loyalists force them? The States cannot compel them without a breach of faith; and how is the injured owner to buy it without money? Suppose that an estate had been parcelled out and sold to twenty persons, how would it be practicable to ascertain the price? Beside the danger of subsequent transfers, all these difficulties occurred, even supposing that respect and attention was paid to the recommendations of the Congress; but we had only the recommendations of Congress to trust to: and how often had their recommendations been fruitless? there were many cases in print in which provincial assemblies had peremptorily refused the recommendations of Congress. It was but the other day the States refused money on the recommendations of Congress. Rhode Island unanimously refused when the Congress desired to be authorised to levy a duty of 5 per cent. because the funds had failed: many other instances might be produced of the failure of the recommendations of Congress, and, therefore we ought not in negotiating for the loyalists to have trusted to the recommendations of Congress: nothing but the repeal of the Acts existing against them ought to have sufficed, as nothing else could give effect to the treaty. Repeal was not mentioned; they had only stipulated to revise and reconsider them, a mortifying and humiliating distinction was made in prejudice of those who had borne arms for Britain: to this we should never have consented; their services claimed the utmost gratitude, and we ought to have hazarded almost everything for them; what had they not sacrificed for us! had they not left their families? had they not left their country? had they not risked their lives, and made a common cause with us; and what was the perfidious and ungrateful return?

We had abandoned them to the fury, the enmity, and the revenge of their countrymen. It was a most impolitic as well as a most dishonourable conduct. Faith, truth, justice, all that was sacred amongst men and nations, must disdain and reprobate it; it would be a stain on our character as a people to the latest posterity; and must, if there was nothing else offensive and disadvantageous in the present peace, stamp it as the most ignominious of any that this country in the very lowest circumstances concluded. He must declare that he could not give his consent to an address in which they were called upon to return thanks for a treaty stamped with such disgraceful conditions as he had enumerated; and he should therefore vote for the amendment.

120 Lord *Hawke* . . .

With respect to the fur trade, he stated that the great object of the peace was a reconciliation with America; that the House of Commons last year had laid down the arms of the nation; that they had made a peace necessary, by declaring the man an enemy to his country who should take up arms against America: it was therefore, said he, the duty of ministers to effect a reconciliation on such grounds as would prevent another war. He reminded their Lordships of the proclamation in 1763, which narrowed the boundaries of Canada still more, and excluded the Utawa country: he stated the disputes between the French and the colonies, previous to the war of 1756: he asserted that the best furs were to the north of the lakes; and asked whether a monopoly of the fur trade was an object when it not only might create another war, but would certainly alienate those affections which we had purchased with the price of independence?

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[Viscount *Townshend* spoke strongly against the desertion of the loyalists.]

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Viscount *Stormont* . . .

There was, prefixed to the articles of peace between England and America, a very pompous preamble, setting forth that those treaties were the best observed in which were reciprocal advantages. He was a long time at a loss to understand the meaning of those words "reciprocal advantages." But at last he discovered that they meant only the advantage of America. For in return for the manifold concessions on our part, not one had been made on theirs. In truth, the American commissioners had enriched the English dictionary with several new terms and phrases; reciprocal advantages, for instance, meant the advantage of one of the parties; and a regulation of boundaries meant a cession of territory.

His Lordship then took a view of our concessions on Newfoundland, the ceded Islands of St. Pierre and Miquelon, which being fortified, will command the entrance of the River of St. Lawrence. The liberty accorded to the Americans to settle in Nova Scotia; the cession of Penobscot, a nursery of masts; the giving up of all that was important or valuable in Canada; the Floridas, important for their situation, and agreeable in respect of climate and soil—We might as well have ceded all Canada to them, as to have drawn such a line of separation; for all the forts which commanded the lakes were in their hands, and we were wholly defenceless and at their mercy, in our

navigation of the lakes: besides, we had given up to them by that boundary, a tract of country four times as large as Britain, and in that tract above six-and-twenty nations of our Indian allies, whose hunting grounds were were obliged, by treaty, to protect, and from whom (setting aside those feelings which dignify human nature) we received most essential benefits in the article of their trade of peltry and furs. The noble Viscount dwelt on this topic with great energy, and declared himself astonished and confounded at the conduct of Ministers in this respect. From this impolicy his Lordship turned to Newfoundland, and there he complained of Ministers giving to the French near seven degrees of latitude for their own exclusive fishing, and at the same time that we did that, we also gave the Americans a participation in all our fisheries, in all our creeks and harbours, and never made any stipulation for our fishing reciprocally in theirs. The granting of St. Pierre and Miquelon to the French was the next object that met the reprehension of his Lordship. If they fortified these two places, as they certainly might, if they pleased, his Lordship declared our fisheries on that coast to be altogether unsafe, and of course of little or no advantage to us. The noble Viscount referred to the various treaties which had been made in respect to this fishery, and showed what honourable pains the Earl of Chatham had always taken to preserve this fruitful nursery of seamen to the British Crown. By the provisions made respecting this fishery, there would be an end at once put to the British trade. While he was Ambassador at the Court of Versailles, they set up a title to the fishery ceded to them by the peace of Utrecht, unshackled by reciprocity. He wrote home for instructions, and received so clear, distinct, and at the same time so peremptory a statement of the English right to fish in common with the French, on the west side of the island, that they were satisfied, or at least they relinquished their claim for the time, and wisely postponed it until a moment should come more favourable to their ambition, when perhaps, there should be an English Minister, so solicitous of power, so anxious to fix himself in his seat, as to hurry a negociation to its end, without care or anxiety for the interest of the State, which he was appointed to govern. He now considered the fishery as irretrievably gone; for there was not a syllable of reciprocity in the treaty, and we yielded, in full right, the possessions of St. Pierre and Miquelon, which they would instantly fortify, and secure to themselves an immense trade. The concessions made to America in this particular, were also very material. The unsettled coasts and bays in Nova Scotia were to be opened to them, and we were to have no power to fish in their bays in return. Eternal jealousies would arise, and instead of securing a peace, we had, in truth, granted all this for the sake of involving the nation in a new war.

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Viscount *Sackville* spoke in the most pointed terms of reprobation of the peace; and declared it to be in every instance the most unwise, impolitic, and ruinous treaty that this country had ever made. In regard to the abandonment of the loyalists, it was a thing of so atrocious a kind, that if it had not been already painted in all its horrid colours, he should have attempted the ungracious task; but never should have been able to describe the cruelty in language as strong and expressive as were his feelings. The King's Ministers had weakly imagined that the recommendation of the Congress was

121 a sufficient security for these unhappy men. For his own part, so far from believing that this would be sufficient, or anything like sufficient for their protection, he was of a direct contrary opinion; and if they entertained any notions of this sort, he would put an end to their idle hopes at once, by reading from a paper in his pocket a resolution which the Assembly of Virginia had come to, so late as on the 17th of December last. The resolution was as follows:

That the laws of the State confiscating property held under the laws of the former Government, (which had been dissolved and made void) by those who have never been admitted into the present social compact, being founded on legal principles, were strongly dictated by that principle of common justice, demand that, if virtuous citizens, in defence of the natural and constitutional rights, risk their life, liberty, and property on their success, the vicious citizens who side with tyranny and oppression, or who cloak themselves under the mask of neutrality, should at least hazard their property, and not enjoy the benefits procured by the labours and dangers of those whose destructions they wished. That all demands or requests of the British court, for the restitution of property confiscated by this State, being neither supported by law, equity, or policy, are wholly inadmissible; and that our delegates in Congress be instructed to move Congress, that they may direct their deputies, who shall represent these States in the general Congress for adjusting a peace or truce, neither to agree to any such restitution, or submit that the laws made by any independent State of this union be subjected to the adjudication of any power or powers on earth.

His Lordship demanded what Ministers had to say now for this boasted recommendation, for which they had stipulated with Congress? Could they say, that the unhappy men who had fought and bled for this country, who had given up their all and the all of their little families; could Ministers say that these men who had said and done and suffered all that was in the power of human nature for our cause, ought not to have had a better security than the present, from scorn, insolence, and ruin? A peace founded on such a sacrifice as this, must be accursed in the sight of God and man. His Lordship added a few words of animadversion on other parts of the treaty. All the forts were on the American side; the immense district of country which supplied us with masts was gone; the Indian nations were abandoned; and we were insulted with the navigation of the Mississippi, when all its benefits were taken away. He then concluded with giving his hearty approbation to the amendment.

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The Earl of *Shelburne* . . . .

Ministry, in the first place, is blamed for drawing the boundary they have done between the territories of the United States and those of our Sovereign in Canada. I wish to examine every part of the treaties on the fair rule of the value of the district ceded—to examine it on the amount of the exports and imports, by which alone we could judge of its importance. The exports of this country to Canada, then, were only 140,000*l.* and the imports were no more than 50,000*l.* Suppose the entire fur trade sunk into the sea, where is the detriment to this country? Is 50,000*l.* a year imported in that article any object for Great Britain to continue a war of which the people of England by their representatives, have declared their abhorrence? Surely it is not. But much less must this appear in our sight, when I tell Parliament, and the whole kingdom, that for many years past, one year with another, the preservation of this annual import of

50,000*l.* has cost this country, on an average, 800,000*l.* I have the vouchers in my pocket, should your Lordships be inclined to examine the fact. But the trade is not given up, it is only divided, and divided for our benefit. I appeal to all men conversant with the nature of that trade, whether its best resources in Canada do not lie to the northward. What, then, is the result of this part of the treaty, so wisely, and with so much sincere love on the part of England clamoured against by noble Lords? Why this. You have generously given America, with whom every call under heaven urges you to stand on the footing of brethren, a share in a trade, the monopoly of which you sordidly preserved to yourselves, at the loss of the enormous sum of 750,000*l.* Monopolies, some way or other, are ever justly punished. They forbid rivalry, and rivalry is of the very essence of the well-being of trade. This seems to be the era of protestantism in trade. All Europe appear enlightened, and eager to throw off the vile shackles of oppressive ignorant monopoly; that unmanly and illiberal principle, which is at once ungenerous and deceitful. A few interested Canadian merchants might complain; for merchants would always love monopoly, without taking a moment's time to think whether it was for their interest or not. I avow that monopoly is always unwise; but if there is any nation under heaven, who ought to be the first to reject monopoly, it is the English. Situated as we are between the old world and the new, and between the southern and northern Europe, all that we ought to covet upon earth is free trade, and fair equality. With more industry, with more enterprise, with more capital than any trading nation upon earth, it ought to be our constant cry, let every market be open, let us meet our rivals fairly, and we ask no more. It is a principle upon which we have had the wisdom to act with respect to our brethren of Ireland; and, if conciliation be our view, why should we not reach it out also to America? Our generosity is not much, but, little as it is, let us give it with a grace. Indeed, to speak properly, it is not generosity to them, but economy to ourselves; and in the boundaries which are established we have saved ourselves the immense sum of 800,000*l.* a year, and showed to the Americans our sincere love and fair intentions, in dividing a little bit of trade which nature had laid at their doors; and telling them that we desired to live with them in communion of benefits, and in the sincerity of friendship.

122 “But the Indians were abandoned to their enemies!” Noble Lords have taken great pains to show the immense value of these Indians; it was not unnatural for noble Lords, who had made so lavish a use of these Indians, to complain of their loss; but those who abhorred their violence would think ministry had done wisely. The Americans knew best how to tame their savage natures. The descendants of the good William Penn would manage them better than all the Mr. Stuarts with all the Jews-harps, razors, trumpery, and jobs that we could contrive. “But our treaties with them bound us to everlasting protection!” This is one of those assertions which always sounds well, and is calculated to amuse the uninformed mind: but what is the meaning of *in perpetuo* in all treaties? That they shall endure as long as the parties are able to perform the conditions. This is the meaning of perpetual alliances; and in the present treaty with America, the Indian nations were not abandoned to their enemies; they were remitted to the care of neighbours, whose



interest it was as much as ours to cultivate friendship with them, and who were certainly the best qualified for softening and humanizing their hearts. But I shall dismiss this subject, though it is blended with others, and proceed to the investigation of the rest of the objections to the treaties of pacification.

"Why have you given America the freedom of fishing in all your creeks and harbours, and especially on the banks of Newfoundland," say the noble objectors to this article? Why? Because, in the first place, they could from their locality have exercised a fishery in that quarter for the first season (for there are two), in spite of all our efforts to repel them. In February the first season commences, and that is entirely at their devotion; for our people can never take their stations there so soon. With regard to the other season, let us again revert to what I have said respecting the fur trade; though we have not a monopoly, we have got such superior advantages in the article of drying, curing, and preparing our fish for market, from the exclusive command of the most contiguous shores, that a rivalry can only whet our industry to reap those benefits our preferable situation in this respect presents to us. "But why have you not stipulated a reciprocity of fishing in the American harbours and creeks?" I will tell your Lordships:—because we have abundant employment in our own. Would not an American think it sordid in the extreme, nay, consider it bordering on madness, to covet the privilege of fattening our cattle on some of their sterile wilds, when we had our own fertile savannahs to have recourse to? Such would be the opinion entertained of Ministry, if it had childishly and avariciously made a stipulation of the nature the objectors think they ought to have. The broad and liberal policy on which the present treaty is formed, is in my opinion much more wise and beneficial than would have been the narrow and wretched plan of bargaining for every little particle of advantage which we might have procured, perhaps, by stickling in the negotiation. As to the masts, a noble Lord said, we were to have in such abundance at Penobscot, I will oppose a fact to his bare assertion. I have in my pocket a certificate from one of the ablest surveyors in our service, Captain Twiss, that there is not a tree there capable of being made into a mast.

But there remains somewhat in these provisional articles still to be considered, which I have never reflected on without feelings as pungent as any which the warmest admirers of the virtues of the loyalist can possibly have experienced. I mean the unhappy necessity of our affairs, which induced the extremity of submitting the fate of the property of these brave and worthy men to the discretion of their enemies. I have but one answer to give the House in this particular; it is the answer I gave my own bleeding heart. A part must be wounded, that the whole of the Empire may not perish. If better terms could be had, think you, my Lords, that I would not have embraced them? You all know my creed. You all know my steadiness. If it were possible to put aside the bitter cup the adversaries of this country presented to me, you know I would have done it; but you called for peace. To make it in the circumstances, which your Lordships all know I stood in, was most arduous. In this point, nothing could be more grievous to me. Neither in public nor in private life is it my character to desert my friends. I had but the alternative, either to accept the terms, said Congress, of our recom-

mentation to the States, in favour of the colonists, or continue the war. It is in our power to do no more than recommend. Is there any man who hears me, who will clap his hand on his heart, and step forward and say, I ought to have broken off the treaty? If there be, I am sure he neither knows the state of the country, nor yet has he paid any attention to the wishes of it. But still I do not despond with respect to the loyalists. I rely upon the wisdom, the honour, and the temper of the Congress. Their recommendation was all that in the nature of things we could procure. They were cautious in wording their treaty, lest they should possibly give offence to the new States, whose constitutions had not advanced to those habits of appearance and strength that banishes all suspicions; peremptory language is not the language of a new State. They must soften their applications. In all their measures for money, for men, they have used the word recommendation to the proper local assemblies; and it has always, or at least generally been paid respect to. And, believe me, they do the loyalists the offices not of friends, who surmise doubts on this occasion. But say the worst; and that after all, this estimable set of men are not received and cherished in the bosom of their own country: is England so lost to gratitude, and all the feelings of humanity, as not to afford them an asylum? Who can be so base as to think she will refuse it to them? Surely it cannot be that noble-minded man, who would plunge his country again knee-deep in blood, and saddle it with an expense of 20 millions for the purpose of restoring them. Without one drop of blood spilt, and without one-fifth of the expense of one year's campaign, happiness and easiness can be given the loyalists in as ample a manner as these blessings were ever in their enjoyment; therefore let the outcry cease on this head. But which of the two styles of language is the more likely to assist the loyalists: the style of the address which declares the confidence of Parliament in the good intentions of the Congress, or of the noble Lords who declare that recommendation is nothing?

123 It surely requires no great depth of penetration to distinguish between these things. A noble Viscount asks why Mr. Oswald was appointed as negociator against such odds? Because he was fitted for the great work in question, by the qualities both of his head and his heart. He was inflexibly upright; had long and liberally been engaged in commerce, and was well versed in the local knowledge of America: no man, therefore, would deny Mr. Oswald's fitness for his station. At the same time his Lordship was free to say, there might be a few men more fit, but they had not come to his cognisance. The noble Viscount (Sackville) might have been a better negotiator; might have distinguished himself as he had always done, both in the Cabinet and in the field. Or, perhaps, the other noble Viscount (Stormont) might have been more remarkable; and if we could have conquered any aversion in his Lordship to venture again on the same theatre, where he had not been received with very general satisfaction before, he, no doubt, would have concluded a peace with the same fortunate distinction with which he commenced the war.

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Let me, before I conclude, call to your Lordships minds the general state of this country, at the period in which the pacific negotiations were set on foot. Were we not at the extremity of distress? Did

not the boldest of us cry out for peace! Was not the object of the war accomplished? Was not the independence of America solemnly recognised by Parliament? Could that independence be afterwards made a stipulation for the restoration of tranquillity? On an entire view of our affairs at that time, is there any honest, sensible man in the kingdom that will not say the powerful confederacy with whom we had then to contend had the most decided superiority over us? Had we scarce one taxable article that was not already taxed to the utmost extent? Were we not 197 millions in debt? and had we not the enormous sum of 25 millions unfunded? Our navy bills bearing an enormous discount; our public credit beginning to totter; our resources confessedly at an end; our commerce day by day becoming worse; our army reduced, and in want of 30,000 men to make up its establishments; our navy, which has been made so much the boast of some men, in such a condition, that the noble Viscount, now at the head of the profession, in giving a description of it, strove to conceal its weakness by speaking low, as if he wished to keep it from going abroad into the world. But in such a day as this it must be told—your Lordships must be told what were the difficulties which the King's Ministers had to encounter in the course of the last campaign. Your Lordships must be told how many sleepless nights I have spent—how many weary hours of watching and distress. What have been my anxieties for New York! What have I suffered from the apprehension of an attack on that garrison, which, if attacked, must have fallen! What have I suffered from the apprehension of an attack on Nova Scotia or Newfoundland! The folly, or the want of enterprise of our enemies, alone protected those places; for, had they gone there instead of Hudson's Bay, they must have fallen. What have I suffered for the West Indies, where, with all our superiority of navy, we were not able to undertake one active or offensive measure for want of troops; and where, if an attack had been made where it was meditated,—we were liable to lose our most valuable possessions! How many sleepless nights have I not suffered for our possessions in the East Indies, where our distresses were undescrivable! How many sleepless nights did I not suffer on account of our campaign in Europe, where, with all our boasted navy, we had only one fleet with which to accomplish various objects! That navy, the noble Viscount was fair to own, was well conducted. Its detachment to the North Seas, to intimidate the Dutch, was a happy and a seasonable stroke; but the salvation of the Baltic Fleet was not at all to be ascribed to ability; accident contributed to that event; accident contributed to more than one article of our naval triumphs. How many of our ships were unclean? The noble Viscount has told us the case of the fleet with which he was sent to the relief of Gibraltar. He could hardly venture to swim home in the Victory. How many of our ships were in fact undermanned? Did the House know this? Did they know that our naval stores were exhausted, that our cordage was rotten, that our magazines were in a very low condition, and that we had no prospect of our navy being much better in the next campaign than it was in the present. [The noble Earl, during all these queries, directed his eyes to Lord Keppel, until the noble Admiral called him to order.] Do the House know all this? The noble Lord is offended at my directing myself to him. I have no

idea of imputing blame to the noble Viscount. His abilities are unquestioned; but when the greatness of the navy is made not only a boast but an argument, it is fair to examine the fact. Are not these things so? and are not these things to be taken into the account, before Ministers are condemned for giving peace to the country? Let the man who will answer me these questions fairly, tell me how, in such circumstances, he would make a peace, before he lets his tongue loose against those treaties, the ratification of which has caused so many anxious days and sleepless nights. It is easy for any bungler to pull down the fairest fabric, but is that a reason, my Lords, he should censure the skill of the architect who reared it? But I fear I trespass, my Lords, on your patience too long. The subject was near my heart, and you will pardon me, if I have been earnest in laying before your Lordships our embarrassments, our difficulties, our views, and our reasons for what we have done. I submit them to you with confidence, and rely on the nobleness of your natures, that in judging of men who have hazarded so much for their country, you will not be guided by prejudice, nor influenced by party.

Viscount *Keppel* said, that he had not been invited to be present when the opinions of Admiral Edwards, and the other officers, had been asked on the Newfoundland fishery, otherwise he might have given his opinion of what had been said. In respect to what the noble Lord had thrown out with regard to the state of the navy, and the embarrassments and accidents of the last campaign, he was not solicitous of the noble Lord's praise, and he was not much  
 124 hurt at his insinuation: he would abide by what he had said—the navy of England was not only in a flourishing, but a vigorous state; and we had the happiest prospects before us for the next campaign.

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Lord *Loughborough* said, . . . . .

The fishery is diminished, but the fur trade is entirely renounced, for the country that produces that article is given away. The noble Lord who spoke last, defends this by arguments which conclude for an entire cession of Canada, and point out that this must be intended, for what else is the meaning of stating the account of the profit and loss of that province. The charge, however, was in a great degree to be placed to the account of the war, and the profit would have been very great upon a peace, had we not given away the most valuable part of the province. The noble Lord attempts also to justify this cession by a long declamation against monopolies, and an encomium upon open and free trade. How the censure of monopolies has the least application to this question, it was impossible to conceive; we had a monopoly of the fur in the same manner that every country has a monopoly of its own produce. Iron, lead, coal, wine, wood, the natural produce of any countries, are sold by those who possess them as owners, not as monopolists. The fur trade was ours, because we held the country that supplied it. How is the trade laid open by transferring that country to the Americans? No more than the coal trade would be opened by yielding up our mines to another power.

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Of all the parts of this treaty the provisional articles are the most unworthy of a nation once respectable: that it might be necessary

to admit the independence of America, he allowed, for without that necessity admitted, those who made these articles could have no defence, their opinion having been often declared against it. America then being independent in all her thirteen States, and considered merely as a Power at war with Great Britain, what was the known situation of each at the time of the treaty? Britain possessed the strongest posts on the coast of America, all the back country, and the River St. Laurence; the fishery was entirely hers; a great party in the country uneasy at the continuance of the war, and dissatisfied with a new government; many zealously attached to our interests.

All the posts are given up; an immense extent of territory, the fur trade, the fishery, and, what is more than all the losses of all the treaties, the faith and honour of the nation pledged to the thousands who have been deserted and betrayed. This treaty stands unparalleled in the history of mankind. It sets out with a proposition that never yet found a place in any treaty, and that subverts the very purpose and end of every treaty. The preamble states in plain terms, that advantage and convenience are the only foundation of peace between States; the principles of justice, the laws of nations, the faith of mutual compacts are then of no regard amongst States, when interest and convenience are in view. The sequel of this introduction professes to arrange matters upon a principle of reciprocal, not partial advantage; and when we proceed in the articles, this reciprocity is to take all to America, and neither give nor secure any thing to Britain. Under the colour of ascertaining a boundary, a country larger than Europe, settled in many parts of it, full of nations who are under the alliance and protection of the Crown, is transferred and done away without even the merit or the grace of making so immense a cession. The coasts likewise are extended to twice their ancient limits, and with so little attention, that part of the land and harbours of Nova Scotia is within the line of the American Coast. The fishery on the shores retained by Britain, is in the next article not ceded, but recognised as a right inherent in the Americans, which though no longer British subjects, they are to continue to enjoy unmolested, no right on the other hand being reserved to British subjects to approach their shores, for the purpose of fishing, in this reciprocal treaty.—Even in the article for the cessation of hostilities, which in every treaty that ever yet was made is reciprocal, the period on our part commences immediately; on the part of the Americans, confiscation, proscription, imprisonment, and captures at sea, are not determined till after the ratification in America and the definitive treaty.—The articles respecting debts and private rights are conceived in terms totally different from other treaties; why the plain and usual language was dropped, and the articles penned in terms totally unintelligible, it is difficult to conceive, unless it was, that the engagement on one side should have no effect, which will not seem an unreasonable suspicion to any one who considers the frame of the fifth article.

That article has excited a general and just indignation. For what purpose could it have been inserted? Those whom it pretends to favour, receive no benefit from it; for what is the purport of a recommendation; but to those the most entitled to our regard, the brave and unhappy men who have not only given up their property, but exposed their lives in our cause, the distinction admitted to their prejudice is cruel and injurious indeed. What is the defence set up for

this article? That the commissioners or even Congress had no power to undertake farther; how true let the other articles testify; but allow it true, why treat without fuller powers granted? Admit the necessity of treating with persons not fully empowered. Why not then omit an article so useless and yet so reproachful? But were there no means left to secure a better article for the loyalists? Can it be forgot, that, besides all other advantages yielded by the treaty, our troops maintain the possession of York Island, Staten Island, Long Island, the inhabitants are armed with us in defence of their own estates; these estates by recent acts have been confiscated; that when we evacuate these places, we shall deliver up the houses, goods, even the persons of our friends. If this were the capitulation of a

125 besieged town, it would be scandalous to surrender upon such terms. At the lowest ebb of distress, reduced, and almost undone, the necessity can hardly be conceived that should oblige a State to subscribe to an article evidently inserted for no other purpose than to blast for ever the hitherto-untainted honour of the nation. Francis the First, vanquished and captive, wrote to his subjects, "Every thing is lost except honour," and the spirit of that sentiment preserved his kingdom and restored his fortune. If we had implored in this instance the aid of France and Spain, the generosity of two great and respectable States would have interposed in favour of the men we have deserted. The fidelity of the loyalists to their King and country, however obnoxious to the hostile pursuit of America, while the war lasted, could never have been felt by any honest mind as a crime that excluded them from any conditions of peace.

In every treaty that has terminated a civil war, the articles of mutual forgiveness and restoration have ever been the easiest to settle. The Catalonians, at the peace of Utrecht, though rebels to King Philip, were admitted to all the rights of the most favoured subjects, the Castilians; and even an abridgment of some provincial privileges which they claimed, was imputed as an unjust desertion of them by the Powers which had availed themselves of their insurrection. No war was ever more marked by personal animosity and party hatred than that carried on in Ireland after the abdication of James II, yet in the articles of Limerick, mere articles for the surrender of a town, there was no difficulty of admitting the most favourable terms for the Catholics engaged against King William. In ancient or in modern history there cannot be found an instance of so shameful a desertion of men who had sacrificed all to their duty, and to their reliance upon our faith. There is even an horrible refinement in the cruelty of the articles; they are told that one year is allowed them to solicit from the lenity of their persecutors that mercy, which their friends neglected to secure; to beg their bread of those by whom they have been stripped of their all; to kiss the hands that have been dipped in the blood of their parents, and to obtain, if they can, leave to repurchase what they have no money to pay for. . . .

*The Lord Chancellor* . . . .

The learned Lord would forgive him for treating what he had said lightly, as he professed, upon his honour, that his plain and narrow conception did not reach his meaning. He had thought proper to allege that the prerogative of the Crown did not reach so far, as to warrant the alienation of territories, in the making of peace,

which were under the allegiance and at the peace of the King. If this doctrine was true, he should consider himself as strangely ignorant of the constitution of his country; for till the present day of novelty and miracle, he had never heard that such a doctrine existed.

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[The report of the proceedings ends with the statement—]

At half past four in the morning, the House divided on the question, that the words proposed to be omitted stand part of the Address. Contents, 69; proxies, 3. Not-contents, 55: proxies, 4. Majority for the Address, 13. There were in the House at one time of the day 145 peers—a greater number than has been known on any question during the present reign.

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*Debate in the Commons on the Preliminary Articles of Peace.  
Feb. 17. . . . .*

Mr. *Thomas Pitt* rose to move an Address. . . .

That as to America, their independence was no concession, since we could not deprive them of it. That the extent of their boundary was no disadvantage to us, but was well chosen to prevent all future contests by lakes and rivers, common to both countries; that Canada left us more territory than he hoped would ever be settled from this country. That the interest of the sincere loyalists were as dear to him as to any man, but that he could never think it would have been promoted by carrying on that unfortunate war which Parliament had in fact suspended before the beginning of the treaty. That it was impossible after the part Congress was pledged to take in it, to conceive that their recommendation would not have its proper influence on the different legislatures; that he did not himself see what more could have been done on their behalf, except by renewing the war for their sakes, and increasing our and their calamities. . . . He then moved,

That an humble Address be presented to his Majesty, to return his Majesty our most humble Thanks for having been graciously pleased to lay before us, the Articles of the different Treaties which his Majesty has concluded, and to assure his Majesty that we have considered them with the most serious attention. To express the great satisfaction and gratitude with which we perceive that his Majesty, in the exercise of the powers which were intrusted to him, has concluded provisional Articles with the states of North America on such principles as must, we trust, lay the foundation of perfect reconciliation and friendship with that country. That, impressed with these sentiments, we cannot forbear particularly to lay before his Majesty, our earnest wish and just expectation that the several states of North America, will, in the amplest and most satisfactory manner, carry into execution those measures which the Congress is so solemnly bound by the treaty to recommend, in favour of such persons as have suffered for the part they have taken in the war, a circumstance to which we anxiously look as tending to cement that good-will and affection which we trust will uniformly mark the future intercourse between us. And to assure his Majesty that we are sensible of his wise and paternal care for the welfare and happiness of his subjects, in relieving them from a long and burthensome war, and restoring the blessings and advantages of peace, by the preliminary Articles agreed upon with the Courts of France and Spain.

126 To assure his Majesty, that we indulge the most sanguine hopes, that his subjects of Great Britain and Ireland will successfully apply their attention to cultivate and improve by every possible means their domestic resources. That with these views we shall apply ourselves to a revision of our

commercial laws on the most liberal principles, and in a manner adapted to the present situation of affairs, for the purpose of extending our trade and navigation on the surest grounds, and diligently providing for the maintenance of our naval power, which can alone insure the prosperity of these kingdoms.

Mr. *Wilberforce* seconded the motion. . . .

With regard to the treaty with America, gentlemen would recollect, that that peace was absolutely ordered by Parliament; all, therefore, that had been done under their direction was not to be altered by Ministers, nor to be imputed to them. When he considered the case of the loyalists, he confessed he there felt himself conquered; there he saw his country humiliated; he saw her at the feet of America! still he was induced to believe, that Congress would religiously comply with the article, and that the loyalists would obtain redress from America. Should they not, this country was bound to afford it them. They must be compensated; Ministers, he was persuaded, meant to keep the faith of the nation with them, and he verily believed had obtained the best terms they possibly could for them. . . .

Lord *John Cavendish* . . . concluded with moving an amendment, by leaving out from the words "and to assure His Majesty, that" in the first paragraph, to the end of the question, in order to insert these words, "his faithful Commons will proceed to consider the same with that serious and full attention which a subject of such importance to the present and future interests of His Majesty's dominions deserves: . . ."

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Lord *North* . . .

In the provisional treaty, I find articles that are a positive contradiction to that reciprocity set forth in their preamble. I cannot find in them any appearance of either equity or reciprocity. I have examined the treaty with the most minute attention; and, as far as my little knowledge of geography will permit me to say, I have found, if the expression may be allowed, that the "reciprocity is all on one side." The boundaries which have been drawn, are not only new in their nature, but extremely generous in their principle. By these boundaries we have given America, in Nova Scotia and Canada, a tract of country so extensive, that it comprehends twenty-four Indian nations. Here many forts have been created and retained at an immense expense to Great Britain; but these may probably be considered merely as losses, were we to revert to the many advantages we have resigned by this cession. Why was not the boundary which is to be found in your statute-book on the table, as settled in the year 1774, thought as proper as that which is now established with regard to Canada? by this the Americans would have been at such a distance, as might not have tempted them to break that permanency of friendship which, I believe, everyone conceives to be necessary to encourage. In the present boundary they have accession within twenty-four miles of Montreal. [Here his Lordship very ably particularised the forts which we had in these new boundaries resigned to America. He likewise specified the sums which had been expended by this kingdom in their erection and possession.]

By the third article we have in our spirit for reciprocity given the Americans an unlimited right to take fish of every kind on the Great Bank, and on all the other banks of Newfoundland. But this was



not sufficient. We have also given them the right of fishing in the Gulf of St. Lawrence, and at all other places in the sea, where they have hertofore enjoyed through us the privilege of fishing. They have likewise the power of even partaking of the fishery which we still retain. We have not been content with resigning what we possessed, but even share what we have left. The United States have liberty to fish on that part of the coast of Newfoundland which British fishermen shall use. All the reserve is, that they are not to dry or cure the same on the island. By this grant they are at liberty to take our property, for which we have so long kept possession of the island. This is certainly a striking instance of that liberal equity which we find is the basis of the provisional treaty! but where shall I find an instance of that reciprocity which is also set forth in the preamble? We have given the Americans the unlimited privilege of fishing on all the coasts, bays, and creeks, in our American dominions. But where have they, under this principle of reciprocity, given us the privilege of fishing on any of their coasts, bays, or creeks? I could wish such an article could be found, were it only to give a colour to this boasted reciprocity. The advantage we should derive from such an article cannot be a consideration; for every real and positive advantage to Great Britain seems to have been entirely foreign to the intent and meaning of this peace in every particular; otherwise, I should have thought it would have been the care of administration not to have given, without the least equivalent, that permission which they could never demand as British subjects. I am at a loss to consider how we could grant, or they could claim it as a right, when they assumed an independency which has separated them from our sovereignty.

By the seventh article all hostilities are to cease, and an unreserved exchange of prisoners is to be made. We are also to withdraw, with all convenient speed, all our armies, evacuate all our garrisons, and withdraw our fleets from every part, place, and harbour within the United States—taking especial care to leave in all fortifications the American artillery that may be therein. But where is the stipulation for our British artillery to be restored by the Americans? We  
 127 have been as liberal in our grants, as we have been forbearing in our requisitions. Surely there can be no reason for adducing this as an instance of reciprocity. There seems to be a peculiar mockery in the next article, which grants us an eternal and free navigation of the Mississippi, from its source to the ocean, in participation with the United States. Such is the freedom of the navigation, that where we were not locally excluded, we have effected it by treaty. We were excluded by the northern boundary. The east is possessed by the Americans. The west had been ceded by the peace of Paris to the French, who had since granted it to the Spaniards; and each shore at its mouth is ceded by the present treaty to Spain. Where is, then, this navigation, so free and open, to be commenced? All the possession, I believe, that we shall ever have, will be its nomination in this treaty. We must be content with the grant without the possession.

And now let me, sir, pause on a part of the treaty which awakens human sensibility in a very irresistible and lamentable degree. I cannot but lament the fate of those unhappy men, who were in general objects of our gratitude and protection. The loyalists, from their

attachments, surely had some claim on our affection. But what were not the claims of those, who, in conformity to their allegiance, their cheerful obedience to the voice of Parliament, their confidence in the proclamation of our generals, invited under every assurance of military, parliamentary, political, and affectionate protection, espoused, with the hazard of their lives, and the forfeiture of their properties, the cause of Great Britain? Were these deserving of being excluded from that ray of protection which was held out by the fifth article, in favour of those loyalists who had not drawn the sword in our defence? By this, there was a provision made for them, which promised a species of retribution and protection. The Congress are earnestly to recommend it to the legislatures of the respective States to provide for the restitution of all estates, rights, and properties which had been confiscated, belonging to real British subjects; and also of the estates, rights, and properties of persons resident in districts in the possession of His Majesty's arms, and who have not borne arms against the United States. Every other description are to have the liberty of going into part of the United States, and there remain without being molested for the space of twelve months, in their endeavours to obtain the restitution of their confiscated properties. Is this agreeable to the spirit of conciliation, which on the return of peace should universally prevail? Who, then, possessed of the least particle of humanity, but must anticipate the miseries these brave and patriotic men must feel from our resigning them to poverty and wretchedness? I cannot but feel for men thus sacrificed for their bravery and principles. They have exposed their lives, endured an age of hardships, deserted their interests, forfeited their possessions, lost their connections, and ruined their families, in our cause. Could not all this waste of human enjoyment excite our desire of protecting them from that state of misery with which the implacable resentment of the States have desired to punish their loyalty to their sovereign, and their attachment to their mother country? If we had not espoused their cause from a principle of affection and gratitude, we should, at least, have protected them, to have preserved our own honour. If not tender of their feelings, we should have been tender of our own character. Never was the honour of a nation so grossly abused as in the desertion of those men, who are now exposed to every punishment that desertion and poverty can inflict. Nothing can excuse our not having insisted upon a stipulation in their favour, but evident impossibility. But where appears this impossibility? I would, for the honour of my country, that there had been an impossibility of stipulation in their favour; then their miseries would not have been aggravated by the reflection of our ingratitude. But to me such a stipulation appears to have been too practicable for my approbation of this treaty. Could not all the surrenders we have so liberally made to America, give us that pretence for reciprocity in favour of these unhappy loyalists? Could not the surrender of Charlestown, of New York, of Rhode Island, and Penobscot, purchase the security of these deserving people? Was Congress not sufficiently sensible of debility of internal resource to prosecute the war? Had she the temerity to have persevered in a war, rather than have given up this opportunity of exercising her implacable and impolitic resentment? I term it impolitic; for it will establish their character as a vindictive people. It would have become the interests as well as the character of a newly-

created people, to have shewn their propensity to compassion. Did they consider these loyalists to have done wrong, they should rather have pitied than punished their error. It would have been more politic in them to have conciliated than to have alienated those affections which arose from principles of loyalty and attachment. They should have considered that such principles form the cement of States. And that it is by loyalty and attachment that they must preserve their own existence. But was it not to be expected that Franch and Spain, after every other omission had been made, would have prevailed with the Americans to have relaxed in this part of their provisional treaty, rather than the whole system of peace should have been destroyed?

The hon. gentleman who has made the motion has said, that Parliament in having declared the Americans independent had made the peace, and are, therefore, responsible for any improper concessions or restorations. It is true that a resolution has passed this House which I opposed, because I considered it as an incumbrance to our exertions. However I admit, that this resolution gave America her independence, and that peace was the natural consequence of this resolution. For I must confess that peace could not be obtained, after such a resolution passed, without recognising her independence. But can any man say, that this resolution included necessarily all the concessions and restorations contained in the preliminaries and provisional treaty? Did Parliament order them? Did Parliament give instructions for the cession of Charlestown, New York, Penobscot, Rhode Island, Detroit, and the fisheries? Did Parliament  
128 order the abandonment of the loyalists? Parliament has not given their countenance to these facts. So that Ministers are accountable, and not Parliament, to the people.

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I shall therefore move the House, that after the words "commerce of His Majesty's subjects," these words be added: "And His Majesty's faithful Commons feel that it would be superfluous to express to His Majesty the regards due from the nation to every description of men, who, with the risk of their lives, and the sacrifice of their properties, have distinguished their loyalty and fidelity during a long and calamitous war."

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*Mr. Powys . . . .*

With regard to America, at the time that certain gentlemen, whose public principles he approved, and with whom he had long acted, withdrew themselves from His Majesty's councils, the House would remember that the ground of difference was, the manner in which the independence of America should be acknowledged. An hon. gentleman (Mr. Fox), for whose abilities he had the highest respect, had contended, that the best way would be to do it with magnanimity, and to acknowledge the independence of America unconditionally; the noble Earl at present at the head of His Majesty's councils, on the other hand had contended, that it would be better policy to make the recognition of independence the basis of a treaty, and to grant it as the price of peace. The provisional treaty certainly did not show that this idea had been carried into practice; and so far the present First Lord of the Treasury had not proved himself so able a politician as he had given himself out to be; but if he had failed in showing

himself a great statesman, he had certainly proved himself a good Christian, for he had not only parted with his cloak to America, but had given her his coat likewise. Not thinking the naked independence a sufficient proof of his liberality to the United States, he had clothed it with the warm covering of our fur trade, and had given them an extensive boundary with the cession of the fishery, of Charles-Town, New-York, Long Island, Penobscot, and all that variety of forts so accurately described by the noble Lord in the blue ribbon. . . . .

Lord *Mulgrave* . . . . .

When he came to speak on the treaty with the United States, he declared that it was, if possible, still more liable to objection, because America had less power to force her requisitions.—He next came to the article respecting the loyalists, which he said he never could regard but as a lasting monument of national disgrace. Nor was this article, in his opinion, more reproachful and derogatory to the honour and gratitude of Great Britain than it appeared to be wanton and unnecessary. Had we not enough of America in our hands to have compelled Congress to have done justice to that unfortunate description of men, who had almost a right to expect we should have continued the war, rather than have abandoned them?

Mr. Secretary *Townshend* said, . . . . .

That the treaty had not proceeded upon narrow-minded principles on our part, he was ready to admit, and he trusted that the House in general would agree, that as it was obviously the interest of Great Britain to establish as close a commercial connection as possible between this country and the United States, it became the peculiar duty of Ministers so to settle the treaty, that there should not appear in it anything illiberal, or expressive of anxiety in Great Britain, to keep back anything the United States might justly expect.—With regard to the observation of the noble Lord in the blue ribbon, that the Americans being no longer British subjects, had no longer a right to the fishery which they had formerly enjoyed, he hoped to God that sort of distinction would never be made, but that we should continue to consider the Americans as our brethren, and give them as little reason as possible to feel that they were not British subjects. But that matter out of the question, how were we to prevent the Americans from fishing as they used to do, or why should we desire it? The produce of their fisheries might in a manner be deemed the American staple, and what detriment could their still enjoying it possibly do to Great Britain? We never sent out our ships till about June, and the American fishery was principally carried on in March. Unless therefore it was thought of so much consequence as to warrant our keeping an armed force constantly upon the station, it would be morally impossible for us to prevent it.—He next adverted to the boundaries, the extensiveness of which he defended on arguments of general policy and particular necessity. By the different charters he showed that the different provinces had various degrees of extent towards the northward, particularly Virginia; and as to the line drawn by the statute book for Canada, to which the noble Lord had alluded, a very little reflection surely would suffice to convince every gentleman that the attempting to enforce that line would have irritated America, and revived that spirit of resentment, which it was now our business to quiet. The statute in question was the Quebec Act, passed in 1774,

an act by no means relished in America: instead, therefore, of advertising to that line, or the line described by proclamation, it had been thought better to fix a new boundary, fair, just, and liberal, and such as the Americans themselves approved.—With regard to the fur trade, and all the arguments built upon that subject, interested individuals might at first raise a clamour, but in great national transactions, the public good must be the predominant object; nor  
 129 was the trade so much injured, as some people would have the public to believe; enough of Canada was still left for the carrying on of that trade; and he ever understood it to be a general maxim, that, in proportion as fruits were better, the farther south they grew, so furs were the best which came from countries the most northern. The noble Lord who had complained of not having sufficient information upon the subject, to give a vote for the address, had, nevertheless, with a wonderful degree of circumstantial detail, adverted to every matter stated in each of the treaties, and among other things he had spent a great deal of time, in describing the various forts that had been built in North America, and the great expense their erection had cost this country, which were all by the new boundaries ceded to America. The building of these forts at such an enormous expense, had been one of the great follies and profusions of the public money, that had distinguished the administration of the noble Lord. Many of the forts were built in the best manner at an immense expense to the nation, when mere blockhouses, or abatis would have answered the purpose as well, and not have cost one half the money. With respect to one of them (Detroit) if a fort was necessary there, a new one might easily be erected on the other side of the water, and at a small expense. He said, that the article respecting the loyalists, gave him as much concern as it could do any other gentleman; but it had been impossible to avoid it, the commissioners on the part of America having again and again declared, that they were instructed to insist on it: if the British commissioners, therefore, had refused to accede to it, the treaty must have been broken off, and much time would have been lost. He was ready to admit, that many of the loyalists had the strongest claims upon this country; and he trusted, should the recommendation of Congress to the American States prove unsuccessful, this country would feel itself bound in honour to make them full compensation for their losses. The noble Lord had complained principally of the exception that was made in the article, which excluded those who had borne arms from the recommendation which Congress engaged itself to make. Undoubtedly, this exception was much to be lamented; but would the noble Lord, or any other Gentleman, say, that the whole of the loyalists were to be given up for a part? Let them recollect, that Lord Cornwallis, in his capitulation at Yorktown, had acted in a similar manner, and doubtless for similar reasons.

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Mr. *Burke* was very pleasant in his remarks on the modesty of the address. At the beginning of the session Ministers had been very verbose, because when men design to perform little, they promise a great deal. Now that Ministers had given away to the enemies of

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\* Mr. Townshend, in conjunction with Lord Shelburne, had had the conduct of the negotiations.

this country immense possessions, few words were judged to be wisest: but, perhaps, the country would deem the verbose address less exceptionable, than that which was defended on the ground of its modesty; at least, he was sure the country would less feel the consequence of the one than of the other; but the Right Hon. Secretary had adopted a style of reasoning fit for the defence of such conduct: "True," said he, "the peace is a bad one, but could you have made a better? Much has been given to the enemy, but, thank God, that much is a heap of rubbish." France, said Mr. Burke, has obtained Tobago and St. Lucia in the West Indies, a dangerous extent of fishery, all the forts and islands in Africa, and a district in the East Indies, which cannot fail to render France a formidable enemy, whenever war shall again break out. To Spain we had ceded East Florida, and guaranteed West Florida and Minorca. To America we had given an unlimited extent of territory, part of the province of Canada, a right of fishery, and other extraordinary cessions; and yet the Right Hon. Secretary told the House, that what we had conceded was of little worth to us, and, in effect, a heap of rubbish. . . . Having argued this strongly, he came to a consideration of the treaty with the United States; a treaty, which in its preamble declared reciprocal advantage and mutual convenience to be its basis, but which was full of the most important concessions on our part, without the smallest balance, or equipoise to support that reciprocity it so much boasted. Had he been worthy to advise Ministers in making that treaty, he would have advised them not to mention such a word as reciprocity. If the terms, from the necessity of our situation, were obliged to be such as were replete with disgraceful concession, to talk of reciprocity was adding insult to injury. . . .

*The Lord Advocate* (Mr. Dundas) . . . .

He accounted, why the Quebec line of boundary was not adopted, and argued that the boundary prescribed by the articles of the present treaty was that least likely to create future uneasiness. . . .

Governor *Johnstone* was very severe in his strictures on the boundaries of the United States, which he said appeared to him to be not only ignorantly drawn, but to give away lands, forts, and fisheries, which the crown had no legal power to cede. He pointed out the ignorance of those who drew up the second article, in which it was stated as one part of the boundaries, that a line was to be drawn "along the middle of the River Mississippi, until it should intersect the northernmost part of the 31st degree of north latitude." This, he said, was direct nonsense; there was no such thing as a northernmost part of a degree, and so a mere school-boy, who had just begun to look into a book of geography, could tell Ministers.

\* \* \* \* \*

*Mr. Sheridan* . . . .

He took a view of the fur trade, the boundaries of Canada, &c. and was apprehensive the great solicitude shown by administration to conciliate the affections of America, as it had been termed, would be a means, in the marking of the boundaries, of creating future dissensions.

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180 Sir *W. Dolben* begged the House to advert to the consideration of the important question which he had before stated: whether the King's Ministers were authorized by the prerogative of the Crown, to alienate from the state the American colonies? He averred, that prerogative did not extend so far; it gave no power to alienate territories not acquired by conquest during the war; at least, this was his most serious opinion. Then, if it did not rest in prerogative, he contended that the Act of last session gave Ministers no authority adequate to so important a measure. He wished to have the opinion of the gentleman of the gown; and he called upon them to give the House information on this most important point. . . .

Mr. *Mansfield* said, that he did not consider himself qualified to rise and pronounce a hasty opinion; the question proposed by the hon. baronet was indeed of the greatest importance, and it would not be prudent in any man to hazard a light opinion. The prerogative of the Crown was allowed to go great, and indeed undefined lengths, as the circumstances of the state might require that measures should be taken for which there was neither precedent nor authority. In all such instances, however, the House would recollect, that responsibility was placed in Ministers, and they were bound to show, whenever they ventured on any extraordinary extension of the prerogative, that there was absolute necessity for such conduct. This he understood to be the doctrine of the constitution. But with respect to the present question; whether the King's Ministers were authorised by the Act of last session to alienate for ever the independence of America? he was free to acknowledge, that he thought the Act gave them sufficient powers. It was clearly determined thereby, that it was the sense of Parliament, and Ministers were bound to act up to what they understood to be the sense of the legislature: and though the Bill was not stated to be, in so many direct words, a Bill for granting independence to America; yet the provisions of the Act amounted exactly to the same thing; and he believed this was the design for which the Bill was introduced.

\* \* \* \* \*

Mr. Chancellor *Pitt* . . . .

It was necessary to look back, notwithstanding all that the hon. gentleman on the other side had said, to the language and the sentiments of that House on this very subject. Had they forgot the resolutions of last Session, by which Ministers were bound to recognise the Independence of America?

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[The report of the debate ends as follows:—]

At half past seven in the morning the House divided on the question, That the words proposed to be left out, stand part of the question:

Tellers,

Yeas	{ Lord Mahon-----	} 208
	{ Mr. Banks-----	
Noes	{ Lord Maitland-----	} 224
	{ Mr. Byng-----	
	Ministers were thus in a minority of-----	16

*Debate in the Commons on Lord John Cavendish's Resolutions of Censure on the terms of the Peace. Feb. 21.*

Lord John Cavendish, [moved a series of resolutions, of which the fourth and fifth were as follows:—]

4. The concessions made to the adversaries of Great Britain, by the said provisional treaty and preliminary articles, are greater than they were entitled to, either from the actual situation of their respective possessions, or from their comparative strength.

5. That this House do feel the regard due from this nation to every description of men, who, with the risk of their lives, and the sacrifice of their property, have distinguished their loyalty, and been conspicuous for their fidelity during a long and calamitous war, and to assure His Majesty, that they shall take every proper method to relieve them which the state of the circumstances of this country will permit.

[Sir W. Dolben renewed his point as to the King's power to make the treaty.]

*The Attorney-General . . . .*

For the present, it was enough for him to say, that the Act of last session clearly gave His Majesty a right to recognise the independence of America; and it was obvious, that the Americans, standing in the predicament of persons declared to be rebels at the time of passing the Act, it was necessary to word it in the general and cautious manner, in which it stood upon the statute book.

131 Sir Adam Ferguson declared himself ready to subscribe to the opinion, that the Act of last session gave the Crown the power in question, but he nevertheless thought His Majesty had exceeded the Act, and had gone farther than he had any legal or constitutional authority to go. What he meant was the cession to the United States of America, of a great part of the province of Quebec, and of Nova Scotia.

*Mr. Chancellor Pitt . . . .*

We have acknowledged American independence—that, Sir, was a needless form: the incapacity of the noble Lord who conducted our affairs; the events of war, and even a vote of this House, had already granted what it was impossible to withhold.

[The report of the debate ends in this way:—]

The question being put, "That the concessions made to the adversaries of Great Britain, by the said provisional treaty and preliminary articles, are greater than they were entitled to, either from the actual situation of their respective possessions, or from their comparative strength:" the House divided at half past three o'clock, when the numbers were,—

Tellers.

Yeas	{ Lord Maitland-----	} 207
	{ Mr. Byng-----	
Noes	{ Lord Mahon-----	} 180
	{ Mr. Macdonald-----	
Majority for censuring the terms of the peace,-----		17.

Lord John Cavendish then withdrew the motion relative to the loyalists, and the House adjourned.



No. 126.—1783, *February 26: Extract from letter, Mr. Livingston to Mr. Washington.*

PHILADELPHIA, *February 26, 1783.*

DEAR SIR: In compliance with the directions of Congress contained in the enclosed resolution, I have the honor to inform your excellency that our last despatches, dated in October, announce a disposition in the belligerent powers to terminate the war by a general peace. The court of London, whose sincerity was most suspected because it was to make the greatest sacrifices, appears to have smoothed the way by the commission to Mr. Oswald (which your excellency has seen) empowering him to treat with the thirteen United States of America.

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No. 127.—1783, *March 12, 13, 14, and 15: Extract from Madison's Report of Debates in Congress.*

These days were employed in reading the depatches brought on Wednesday morning by Captain Barney, commanding the *Washington* packet. They were dated from December the fourth to the twenty-fourth, from the ministers plenipotentiary for peace, with journals of preceding transactions; and were accompanied by the preliminary articles signed on the thirtieth of November, between the said ministers and Mr. Oswald, the British minister.

The terms granted to America appeared to Congress, on the whole, extremely liberal. It was observed by several, however, that the stipulation obliging Congress to recommend to the States a restitution of confiscated property, although it could scarcely be understood that the States would comply, had the appearance of sacrificing the dignity of Congress to the pride of the British King.

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132 No. 128.—1783, *March 12: Extract from letter, Mr. Livingston to Mr. Washington.*

PHILADELPHIA, *March 12, 1783.*

DEAR SIR: The *Washington* packet arrived this morning. I have not yet had leisure to read all my letters, but as an express is ready to go early to-morrow, I rather choose to rely upon your goodness to excuse a letter written in extreme haste than to hold myself inexcusable by not informing you of what we yet know of the state of our negotiations. None of my letters is of a later date than the 25th of December. All difficulties had then been removed with respect to us and the preliminaries were signed; they consist of nine articles.

The *first* acknowledges our independence.

The *second* describes our boundaries, which are as extensive as we could wish.

The *third* ascertains our rights as to the fishery, and puts them upon the same footing that they were before the war.

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No. 129.—1783, *March 12: Extract from Letter, Mr. Madison to Mr. Edmund Randolph.*

PHILADELPHIA, *March 12, 1783.*

DEAR SIR: Captain Barney, commanding the American packet-boat, which has been long expected, with official intelligence from our ministers in Europe, arrived here this morning. He brings a supply of money, the sum of which I can not as yet specify, and comes under a passport from the King of Great Britain. The despatches from our ministers are dated the fifth, fourteenth, and twenty-fourth of December. Those of the fourteenth enclose a copy of the preliminary articles, provisionally signed between the American and British plenipotentiaries. The tenor of them is that the United States shall be acknowledged and treated with as free, sovereign, and independent; that our boundaries shall begin at the mouth of the St. Croix, run thence to the ridge dividing the waters of the Atlantic from those of the St. Lawrence; thence to the head of Connecticut River; thence down to forty-five degrees north latitude; thence to Cadaraqui; thence through the middle of Lakes Ontario, Erie, Huron, and Superior to Long Lake, to Lake of the Woods; and thence due west to the Mississippi; thence down the middle of the river to latitude thirty-one; thence to Apalachicola, to Flint River, to St. Mary's, and down the same to the Atlantic; that the fisheries shall be exercised as formerly; . . . .

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No. 130.—1783, *March 25: Extract from Letter, Mr. Livingston to the Peace Commissioners.*

PHILADELPHIA, *March 25, 1783.*

GENTLEMEN: I am now to acknowledge the favor of your joint letter by the *Washington*, together with a copy of the preliminary articles; both were laid before Congress. The articles have met with their warmest approbation, and have been generally seen by the people in the most favourable point of view.

The steadiness manifested in not treating without an express acknowledgment of your independence previous to a treaty is approved, and it is not doubted but it accelerated that declaration. The boundaries are as extensive as we have a right to expect, and we have nothing to complain of with respect to the fisheries.

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No. 131.—1783, *April 11: Extract from letter, Mr. Thomas Jefferson to Mr. Jay.*

. . . I cannot, however, take my departure without paying to yourself and your worthy colleagues my homage for the good work you have completed for us, and congratulating you on the singular happiness of having borne so distinguished a part both in the earliest and latest transactions of this revolution. The terms obtained for us are indeed great, and are so deemed by your countrymen, a few ill-designing debtors excepted. . . .

133 No. 132.—1783, *April 19: Extract from letter, Mr. Fox to Dr. Franklin.*

ST. JAMES, *April 19, 1783.*

\* \* \* \* \*

Permit me, sir, to take this opportunity of assuring you how happy I should esteem myself if it were to prove my lot to be the instrument of completing a real and substantial reconciliation between two countries formed by nature to be in a state of friendship one with the other, and thereby to put the finishing hand to a building, in laying the first stone of which I may fairly boast that I had some share.

I have the honour to be, with every sentiment of regard and esteem, sir, your most obedient, humble servant,

C. J. FOX.

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No. 133.—1783, *May 21: Extract from letter, Mr. W. Livingston to Mr. Jay.*

. . . The Treaty is universally applauded; and the American Commissioners who are concerned in making it, have rendered themselves very popular by it. . . .

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No. 134.—1783, *June 1: Clause proposed by Mr. Hartley.\**

JUNE 1, 1783.

It is agreed that the citizens of the United States of America shall be permitted to import into, and export from, any port or place of the territories belonging to the crown of Great Britain, in American ships, any goods, wares, and merchandise which might have been so imported by the inhabitants of the British American colonies before the commencement of the late war, upon payment of the same duties and charges as the like sort of goods or merchandise are now, or may be, subject and liable to if imported or exported by British subjects, in British ships, into and from any port or place of the territories belonging to the crown of Great Britain: Provided, however, that the citizens of the United States shall not have any right or claim, under this convention, to carry on any direct intercourse of commerce between the British West Indian Islands and the ports of Great Britain.

It is agreed, likewise, that the subjects of Great Britain shall be permitted to import into, and to export from, any part of the territories of the United States of America, in British ships, any goods, wares, and merchandise which might have been so imported or exported by the subjects of Great Britain before the commencement of the late war, upon payment of the same duties and charges as the like sort of goods, wares, and merchandise are now, or may be, liable to if imported or exported in American ships by the citizens of the United States of America.

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\* This clause was proposed by Mr. Hartley, the British Commissioner, during the negotiations between the date of the preliminary articles and the execution of the definitive Treaty. It was not agreed to.

No. 135.—1783, June 12: *Extract from letter, Dr. Franklin to Mr. Livingston.*

PASSY, June 12, 1783.

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The definitive treaty with England is not yet concluded, their ministry being unsettled in their minds as to the terms of the commercial part; nor is any other definitive treaty yet completed here, nor even the preliminaries signed of one between England and Holland.

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134 No. 136.—1783, June 27: *Extract from letter, Mr. Adams to Mr. Livingston.*

PARIS, June 27, 1783.

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I have put these several cases, because I should be surprised at nothing from the present British ministry. If they have any plan at all it is a much less generous one towards America than that of their immediate predecessors. If Shelburne, Townshend, Pitt, &c., had continued we should have had everything settled long ago to our entire satisfaction, and to the infinite advantage of Great Britain and America, in such a manner as would have restored good humor and affection as far as in the nature of things they can now be restored.

After the great point of acknowledging our independence was got over, by issuing Mr. Oswald's last commission, the Shelburne administration conducted towards us like men of sense and honor. The present administration have neither discovered understanding nor sincerity. The present British administration is unpopular, and it is in itself so heterogeneous a composition that it seems impossible it should last long. Their present design seems to be not to commit themselves by agreeing to anything. As soon as anything is done somebody will clamor. While nothing is done, it is not known what to clamor about. If there should be a change in favor of the ministry that made the peace, and a dissolution of this profligate league, which they call the coalition, it would be much for the good of all who speak the English language. If fame says true, the coalition was formed at gambling tables, and is conducted as it was formed, upon no other than gambling principles.

Such is the fate of a nation, which stands tottering on the brink of a precipice, with a debt of two hundred and fifty-six millions sterling on its shoulders; the interest of which, added to the peace establishment only, exceeds by above a million annually all their revenues, enormously and intolerably as they are already taxed. The only chance they have for salvation is in a reform, and in recovering the affection of America. The last ministry were sensible of this, and acted accordingly. The present ministry are so far from being sensible of it, or caring about it, that they seem to me to be throwing the last dice for the destruction of their country.

I have the honour to be, &c.,

JOHN ADAMS.

No. 137.—1783, July 17: *Extract from letter, Mr. Adams to Mr. Livingston.*

PARIS, July 17, 1783.

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The Duke\* said the English had been trying to deceive us, but were now developing their true sentiments. They pretended for awhile to abolish the navigation act and all distinctions, to make one people with us again, to be friends, brothers, &c., in hopes of drawing us off from France, but not finding success, they were now showing their true plan. As to the pretended system of Shelburne of a universal free commerce, although he thought it would be for the good of mankind in general, yet for an English minister it was the plan of a madman, for it would be the ruin of that nation. He did not think Shelburne was sincere in it, he only meant an illusion to us. Here I differ from the Duke and believe that the late ministry were very sincere towards us, and would have made a treaty with us at least to revive the universal trade between us upon a liberal plan. This doctrine of ruin from that plan to the English has been so much preached of late in England by the French and American refugees, who aim at establishments in Canada and Nova Scotia, and by the old Butean administration and their partisans, that I do not know whether any ministry could now support a generous plan. But if Temple, Thurlow, Shelburne, Pitt, &c., should come in I should not despair of it. It is true the Shelburne administration did encourage the ideas of cordial perfect friendship, of entire reconciliation of affections, of making no distinction between their people and ours, especially between the inhabitants of Canada and Nova Scotia and us, and this with the professed purpose of destroying all seeds of war between us. These sentiments were freely uttered by Fitzherbert, Oswald, Whitefoord, Vaughan, and all who had the confidence of that ministry, and in these sentiments they were, I believe, very sincere. And they are, indeed, the only means of preventing a future war between us and them, and so sure as they depart from that plan, so sure, in less than fifteen years, perhaps less than seven, there will break out another war. Quarrels will arise among fishermen, between inhabitants of Canada and Nova Scotia and us, and between their people and ours in the West Indies, in our ports, and in the ports of the three kingdoms, which will breed a war in spite of all we can do to prevent it. France sees this and rejoices in it, and I know not whether we ought to be sorry, yet I think we ought to make it a maxim to avoid all wars if possible, and to take care that it is not our fault, if we can not. We ought to do everything which the English will concur in to remove all causes of jealousies, and kill all the seeds of hostility as effectually as we can, and to be upon our guard to prevent the French, Spaniards, and Dutch from sowing the seeds of war between us, for we may rely upon it they will do it if they can.

I have the honour to be, &c.

JOHN ADAMS.

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\* Duc de la Vauguyon, French Minister to Holland.

135 No. 138.—1783, July 19: *Extract from letter, Mr. Jay to Mr. Livingston.*

The expectations excited in England by Lord Shelburne's friends, that he would put a speedy period to the war, made it necessary for him either to realize those expectations or prepare to quit his place. The Parliament being to meet before his negotiations with us were concluded, he found it expedient to adjourn it for a short term, in hopes of then meeting it with all the advantages that might be expected from a favourable issue of the negotiation. Hence it was his interest to draw it to a close before that adjournment should expire; and to obtain that end, both he and his commissioner became less tenacious on certain points than they would otherwise have been. Nay, we have, and then had, good reason to believe that the latitude allowed by the British Cabinet for the exercise of discretion was exceeded on that occasion.

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No. 139.—1783, July 25: *Extract from letter, Mr. Alexander Hamilton to Mr. Jay.*

The peace, which exceeds in the goodness of its terms the expectation of the most sanguine does the highest honour to those who made it. It is the more agreeable, as the time was come when thinking men began to be seriously alarmed at the internal embarrassments and exhausted state of this country. The New England people talk of making you an annual fish-offering, as an acknowledgment of your exertion for the participation of the fisheries.

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No. 140.—1783, September 5: *Letter, Dr. Franklin to Mr. Fox.*

PASSY, September 5, 1783.

SIR: I received in its time the letter you did me the honour of writing to me by Mr. Hartley; and I can not let him depart without expressing my satisfaction in his conduct towards us, and applauding the prudence of that choice which sent us a man possessed of such a spirit of conciliation, and of all that frankness, sincerity, and candour which naturally produce confidence, and thereby facilitate the most difficult negotiations. Our countries are now happily at peace, on which I congratulate you most cordially; and I beg you to be assured that as long as I have any concern in public affairs I shall readily and heartily concur with you in promoting every measure that may tend to promote the common felicity.

With great and sincere esteem and respect, I have the honour to be, &c.,

B. FRANKLIN.

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No. 141.—1783, September 6: *Extract from letter, Mr. Franklin to Mr. Hartley.*

PASSY, September 6, 1783.

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There is no truth more clear to me than this, that the great interest of our two countries is a thorough reconciliation. Restraints on the

freedom of commerce and intercourse between us can afford no advantage equivalent to the mischief they will do by keeping up ill-humour and promoting a total alienation. Let you and me, my dear friend, do our best toward advancing and securing that reconciliation. We can do nothing that will in a dying hour afford us more solid satisfaction.

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No. 142.—1784, February 18: *Extract from letter, General Schuyler to Mr. Jay.*

Too many, not contented with a peace glorious, and advantageous beyond the expectation of the most sanguine real patriot, and that, too, obtained at a period when the complexion of our national affairs was alarming in the extreme, wish to evade the positive stipulations, few and inconsiderable as they are, in favour of those who adhered to Britain.

136 No. 143.—1785, March 4: *Extract from Report of Mr. Secretary John Jay on the letter of Mr. Adams, dated June 22, 1784.*

OFFICE FOR FOREIGN AFFAIRS, March 4, 1785.

The Secretary of the United States of America for the Department of Foreign Affairs, to whom was referred a letter of the 22d June, 1784, from the honorable John Adams, Esq. reports as his opinion:—

That Congress, by their declaration of the 4th July, 1776, announced the *independence* of the United States to all the nations of the world, and that it was then as perfect and complete as it now is or ever can be.

That it would be most prudent, in the opinion of your Secretary, for Congress, in speaking of the treaty of peace, to avoid as much as possible connecting their independence with it, lest such connection, unless exceedingly guarded, might afford matter to argue an admission that their independence was indebted for legal validity to the acknowledgment of it by Great Britain. . . .

[1786: *British Statute*, 26 Geo. III, cap. 26.  
(See Appendix to British Case, p. 555.)]

No. 144.—1811, August 21: *Extract from Mr. Adams' letter to the "Boston Patriot."*

. . . . I represented to them [the French diplomats, 1779] that France ought to support our claim to a share in it, if it were only to prevent England from commanding a monopoly of it; that our right to it was at least as clear and indisputable as that of England or France; that it was situated in the ocean, which was open and free and common to all nations, to us as much as to any other; that its proximity to our country seemed naturally to give us a right

preferable to any European claim; but that we asked no preference; but acknowledged the right of all nations to the ocean and its inhabitants; that we were in possession, and had been so from the first settlement of our country; we had carried on the fisheries from the beginning; and that Great Britain was more indebted to our ancestors for the flourishing state of the fisheries, both of cod and whales, than to all the inhabitants of the three kingdoms; that the fisheries were an essential link in the chain of American commerce, which was one connected system; that they were more particularly indispensable to New England; that our remittances to France or England could not be made without our commerce in fish with Spain, Portugal, and Italy, as well as all the West India Islands. . . .

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No. 145.—1814, *December 17: Extract from letter, Mr. Madison to Mr. Adams.*

WASHINGTON, 17 December, 1814.

. . . . I have caused the archives of the department to be searched, with an eye to what passed during the negotiations for peace on the subject of the fisheries. The search has not furnished a precise answer to the inquiry of Mr. Adams. It appears from one of your letters, referring to the instructions accompanying the commission to make a treaty of commerce with Great Britain, that the original views of Congress did not carry their ultimatum beyond the common right to fish in waters distant three leagues from the British shores. The negotiations, therefore, and not the instructions, if no subsequent change of them took place, have the merit of the terms actually obtained. That other instructions, founded on the resolutions of Congress, issued at subsequent periods, cannot be doubted, though, as yet, they do not appear. But how far they distinguished between the common use of the sea, and the use, then common, also, of the shores, in carrying on the fisheries, I have no recollection. . . .



## PART III.

## DOCUMENTS BEARING ON THE TREATY OF GHENT, 1814.

*1814: Ghent Negotiations.*

[The British peace-plenipotentiaries were Lord Gambier and Messrs. Henry Goulburn and William Adams.

[The American plenipotentiaries were Messrs. John Quincy Adams, J. A. Bayard, Henry Clay, Jonathan Russell, and Albert Gallatin.

[In the appendix to the United States' Case (pages 240-261) may be found the instructions issued to the United States' negotiators (June 25, 1814) and the protocols and official communications. Sufficient of these latter documents to make intelligible other related documents are here repeated.]

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No. 1.—1813, *April 15: Extract from letter, Mr. Monroe, Secretary of State, to the American Commissioners.*

DEPARTMENT OF STATE, *April 15, 1813.*

The article in the treaty of 1794, which allows British traders from Canada and the North West Company, to carry on trade with the Indian tribes, within the limits of the United States, must not be renewed. The pernicious effects of this privilege have been most sensibly felt in the present war, by the influence which it gave to the traders over the Indians, whose whole force has been wielded by means thereof against the inhabitants of our Western States and territories. You will avoid also any stipulation which might restrain the United States from increasing their naval force to any extent they may think proper, on the lakes held in common; or excluding the British traders from the navigation of the lakes and rivers, exclusively within our own jurisdiction.

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No. 2.—1814, *August 8: Extract from Notification given by the British to the American Plenipotentiaries at the first Conference.*

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That the British Government did not intend to grant the United States gratuitously the privileges formerly granted by treaty to them of fishing within the limits of the British sovereignty, and of using the shores of the British territories for purposes connected with the fisheries.

No. 3.—1814, October 30: *Clause drafted by Mr. Gallatin.*

The right and liberty of the people and inhabitants of the United States to take, dry, and cure fish in places within the exclusive jurisdiction of Great Britain as recognized (and secured) by the former *treaty of peace*; and the privilege of the navigation of the Mississippi, within the exclusive jurisdiction of the United States, (as secured to the subjects of Great Britain by the same treaty) are hereby recognised and confirmed.

No. 4.—1814, November 1-7: *Extract from Mr. J. Q. Adams' Memoirs.*

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But the great difficulty was with regard to the fisheries. Mr. Gallatin's draft proposed the renewal of the right of fishing, and drying fish, within the British jurisdiction, together with  
 138 the right of the British to navigate the Mississippi, both taken from the Peace of 1783. I was in favor of this. Mr. Clay has an insuperable objection to the renewal of the right to the British of navigating the Mississippi. I then declared myself prepared either to propose Mr. Gallatin's article, or to take the ground that the whole right to the fisheries was recognized as a part of our national independence, that it could not be abrogated by the war, and needed no stipulation for its renewal. Mr. Gallatin argued that, on the same principle, the British right to navigate the Mississippi would also be established, without needing to be renewed. Mr. Clay was averse to either of the courses proposed, and said that, after all, if the British Plenipotentiaries should insist upon this point, we should all finally sign the treaty, without the provision respecting the fishery. Mr. Russell expressed some doubt whether he would sign without it, and I explicitly declared that I would not, without further instructions; I could not say that I would, with them.

5th. We had a meeting of the mission at eleven. Discussed further, and agreed upon, the draft of the articles to be proposed for the treaty. Mr. Clay's article respecting impressments was adopted. That concerning the fisheries and the navigation of the Mississippi, as drawn by Mr. Gallatin, was further debated, and the vote taken upon it. Mr. Clay and Mr. Russell voted against it; Mr. Bayard, Mr. Gallatin, and myself, for proposing it. After the vote was taken, Mr. Clay said that he should not sign the communication by which the proposal would be made.

7th. We had the meeting of the mission between eleven and twelve o'clock at my chamber. Mr. Clay proposed a paragraph for the note to be sent to the British Plenipotentiaries, as a substitute instead of the article respecting the fisheries and the navigation of the Mississippi which had passed by vote on Saturday. Mr. Clay said that in declaring at that time that he should not sign the note accompanying the project if it included Mr. Gallatin's article, he had not intended that it should in any manner affect the minds of any of us. If the article should be proposed and accepted, and a treaty otherwise not objectionable should be obtainable, he might perhaps ultimately accede to it; but the object was in his view so important that he could not reconcile it to himself to agree in making the proposal.

I had drawn the sketch of an article placing both the points precisely in their condition at the commencement of the war; to which Mr. Gallatin objected that it offered the British more than his draft, because it entitled them to the provision in the Treaty of 1794.

Mr. Clay preferred it to Mr. Gallatin's draft, because it would leave in all its force all the operation of our acquisition of Louisiana, as far as it impairs the British right of navigating the Mississippi, but he still would not agree to it. His proposed paragraph took the ground which I had originally suggested, that all the fishery rights formed a part of the recognition of our independence, and as such were by our instructions excluded from discussion.

I felt I should have preferred the proposal of Mr. Gallatin's article, as placing the subject out of controversy, but that, as we could not be unanimous for that, I was willing to take Mr. Clay's paragraph, by which we should reserve all our rights, and at the same time execute our instructions.

Mr. Gallatin apprehended that the British Plenipotentiaries might on that point not reply to us at all, and then if the peace should be made without an article renewing the fishing rights now contested by them, that the British Government would consider us as notified that the rights are at an end, and forcibly deprive our people of them.

I was very confident that the British Plenipotentiaries would reply to us, and not leave the subject at this stage without further notice; and if they persevered in contending that the rights were abrogated, we might ultimately refuse to sign the treaty on that ground.

Mr. Gallatin said his difficulty was, that he thought the British had in this case the argument with them, and that the treaty liberty of fishing and drying fish within their jurisdiction was abrogated by the war.

Mr. Bayard said that rather than differ among ourselves he would agree to substitute Mr. Clay's paragraph instead of the proposed article; and this was ultimately assented to by us all. We then read over the articles as hitherto drawn up and corrected, and amended them. Mr. Gallatin and myself are to prepare for to-morrow the observations on the several articles to be presented with the draft of the treaty.

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No. 5.—1814, November: Paragraph drawn by Mr. Clay and transmitted to the British on the 10th November.

In answer to the declaration made by the British plenipotentiaries respecting the fisheries, the undersigned, referring to what passed in the conference of the 9th August, can only state that they are not authorised to bring into discussion any of the rights or liberties which the United States have heretofore enjoyed in relation thereto. From their nature, and from the peculiar character of the treaty of 1783, by which they were recognised, no further stipulation has been deemed necessary by the government of the United States, to entitle them to the full enjoyment of all of them.

189 No. 6.—*Extracts from Writings of Mr. J. Q. Adams in reference to the foregoing.*

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The article proposed by Mr. Gallatin covered the whole ground *disputed* by the adversary: and the advantage of it to us, if proposed and accepted, would have been, that we should have issued from the war, with all the fishing rights and liberties, as enjoyed before it, *uncontested*. When, therefore, during the discussion, and *before* the vote had been taken, I offered to abandon this advantage, and to rest the future defence of the fishing rights and liberties upon the distinct assertion that they had not been forfeited or abrogated by the war, by thus resting it, I knew that it would be necessary to defend them, after the conclusion of the peace—to defend them against the power, and the policy, and the intellect of Great Britain. It was placing them all at the hazard of future negotiation and another war: and I thought I offered a signal concession, of deference to the mere sectional feelings of one western member of the mission, by offering to accept the alternative. But I felt the most entire confidence in the soundness of the principle which I asserted. I knew that it was sufficient to preserve the fishing rights and liberties from *surrender*. I was content with it as a fulfillment of our express instructions; and I relied upon the determined spirit and active energy of my country to maintain it after the peace. I had no doubt of the ultimate result, so long as *our assent* to the British doctrine and notification was neither expressed nor implied.

My proposal was not, however, accepted, until, upon taking the vote on the question whether the article proposed by Mr. Gallatin should be offered to the British plenipotentiaries, it appeared there was a majority of the mission in favour of it. This vote was taken, as has been stated, on the 5th November; and on the 7th the substitute, being the proposition which I had suggested on the 4th, was offered by Mr. Clay, and unanimously accepted. The article was not proposed to the British plenipotentiaries, nor was the consideration of it ever after resumed.

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No. 7.—1814, November 10: *Article 8 of the Proposals sent by the Americans to the British.*

It is agreed that a line drawn due north or south, (as the case may be) from the most northwestern point of the Lake of the Woods, until it shall intersect the forty-ninth parallel of north latitude, and from the point of such intersection due west along and with the said parallel, shall be the dividing line between His Majesty's territories and those of the United States to the westward of the said lake, as far as the said respective territories extend in that quarter, and that the said line shall to that extent form the southern boundary of His Majesty's said territories, and the northern boundary of the said territories of the United States: provided that nothing in the present article shall be construed to extend to the north-west coast of America, or to the territories belonging to, or claimed by, either party on the continent of America to the westward of the Stony Mountains. . . . .

No. 8.—1814, November 26: *Extract from an addition to Article 8 proposed by the British.*

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. . . . (and it is further agreed the subjects of His Britannic Majesty shall at all times have access) from His Britannic Majesty's territories, by land or inland navigation, into the aforesaid territories of the United States to the River Mississippi, with their goods, effects, and merchandise, and that His Britannic Majesty's subjects shall have and enjoy the free navigation of the said river.

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No. 9.—1814, November 28, 29: *Extract from Mr. J. Q. Adams' Memoirs as to Statement made by him at a Conference of American Plenipotentiaries.*

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I observed . . . . that as to the British right of navigating the Mississippi, I considered it as nothing, considered as a grant  
140 from us. It was secured to them by the Peace of 1783, they had enjoyed it at the commencement of the war, it had never been injurious in the slightest degree to our own people, and it appeared to me that the British claim to it was just and equitable.

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Mr. Gallatin declared himself of the same opinion with me, as to the grant of the mere right of the navigation of the Mississippi; but he asked me why I had then hesitated so much about offering it as an equivalent for the fisheries.

Mr. Clay, on the other hand, thought there would be a gross inconsistency in asking a specific stipulation for the fisheries, after the ground we had taken, that no article was necessary to secure us in the enjoyment of them.

I said that my reluctance at granting the navigation of the Mississippi arose merely from the extreme interest that Mr. Clay and the Western people attached to it; that as to the ground we had taken upon the fisheries, I believed it firm and solid. I had put my name to it, and considered myself as responsible for it. But when some of my colleagues, who had also put their names to it, told me, in this chamber, among ourselves, that they thought the ground untenable, and that there was nothing in our principle, I found it necessary to mistrust my own judgment, particularly after the enemy had given us notice that they meant to deprive us of the fisheries in part, unless a new stipulation should secure them. If our principle was good for the fisheries on our part, it was good to the British for the navigation of the Mississippi. The Plenipotentiaries had made no reply to our remarks concerning the fisheries. That silence might be taken for acquiescence, and if there was nothing more I would rest it upon that. But they asked for a new stipulation of their right to navigate the Mississippi. This implied their opinion that they had lost the right as agreed to in the Treaty of 1783. It became necessary, therefore, for us to ask a similar stipulation for the fisheries within their juris-

diction; but I would not accept it even for the rights of fishing on the banks. I would not sign a treaty containing such a stipulation; for it would be a sort of admission that the right would be liable to forfeiture by every war we might have with Great Britain. I would not take, therefore, a stipulation for anything recognised in the Treaty of Peace as a right.

No more (said Mr. Gallatin) than an article acknowledging again our independence.

I said, Certainly.

Mr. Bayard thought there was a material difference between the rights secured by the Peace of 1783 to us and the British right of navigating the Mississippi, in the same treaty. The rights recognized as belonging to us were certainly permanent, and not to be forfeited by a subsequent war. But we had nothing to grant. We recognized no new rights to the British. The Mississippi was not then ours to grant; it was held by Spain, and the aspect of the subject was entirely changed by our subsequent acquisition of Louisiana. Our argument for the fisheries might therefore be sound, and yet not apply to the British for the navigation of the Mississippi.

It became necessary to determine by a vote whether Mr. Gallatin's proposal to offer an article making the navigation an equivalent for the fisheries should be adopted, and it was determined that it should. At the meeting to-morrow he is to produce it, and the draft of a note to the British Plenipotentiaries.

29th. I had barely time to finish my letter to my wife, to go by this day's post, when the meeting of the mission began. Mr. Gallatin had prepared his draft of a note to the British Plenipotentiaries, closing with a request for a conference, and his proposed article offering the navigation of the Mississippi as an equivalent for the fisheries within the British jurisdiction. This renewed our discussion of the whole subject, but it was now on all sides good-humored. I had some doubt whether it would be perfectly safe to ask a conference, while we were so far from being agreed among ourselves. Mr. Clay said he could put the subject of the Mississippi navigation upon principles to which it was impossible we should not all agree. I said that nothing like that had been apparent from our discussion hitherto; that he certainly would not be willing that I should be the spokesman of his sentiments, and I did not think it likely that he would very accurately express mine.

He said he did not think there was so irreconcilable a difference in the structure of our minds; and that it was remarkable there was so exact a coincidence of views on this point between persons at a great distance from each other as there was between Mr. Crawford and him. Mr. Russell had received a letter from Mr. Crawford, in which he had urged in very strong terms objections against granting the navigation of the Mississippi as an equivalent for the fisheries, and had used the same arguments against it as those he had adduced.

Mr. Gallatin brought us all to unison again by a joke. He said he perceived that Mr. Adams cared nothing at all about the navigation of the Mississippi, and thought of nothing but the fisheries. Mr. Clay cared nothing at all about the fisheries, and thought of nothing but the Mississippi. The East was perfectly willing to sacrifice the West, and the West was equally ready to sacrifice the East. Now, he

was a Western man, and would give the navigation of the river for the fisheries. Mr. Russell was an Eastern man, and was ready to do the same.

I then told Mr. Clay that I would make a coalition with him of the East and West. If the British would not give us the fisheries, I would join him in refusing to grant them the navigation of the river.

He said that the consequence of our making the offer would be that we should lose both.

Upon the rest of Mr. Gallatin's draft there was no difference of opinion, and little discussion. It was admitted that if the navigation of the river was granted, and access to it through out territories, provision must be made for collecting the duties, and their access must be limited to particular points of departure and a mere road. Or if general access, like that which they demand, should be granted, they ought to grant in return to our people access through their territories

to the St. Lawrence, and the navigation of that river. I then  
141 suggested that I wished to make an addition of one or two paragraphs to Mr. Gallatin's draft of a note, the object of which would be to show our sense of the importance of the concessions we had made, and intimating our determination to make no cession of territory, and to sacrifice none of the rights or liberties which we enjoyed at the commencement of the war. There was an adjournment from two to three o'clock, for me to make the draft of the additional paragraphs that I proposed. I had them ready at the adjourned meeting. They were read and discussed until past four, our dinner-time. It was finally concluded to meet again to-morrow morning, at eleven, and in the mean time that all my colleagues should successively revise my draft.

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No. 10.—1814, December 1: *Extract from Protocol of Conference.*

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10th. The American plenipotentiaries also proposed the following amendment to Article 8th, viz: "The inhabitants of the United States shall continue to enjoy the liberty to take, dry, and cure fish in places within the exclusive jurisdiction of Great Britain, as secured by the former treaty of peace; and the navigation of the River Mississippi within the exclusive jurisdiction of the United States shall remain free and open to the subjects of Great Britain, in the manner secured by the said treaty; and it is further agreed, that the subjects of His Britannic Majesty shall, at all times, have access from such place as may be selected for that purpose in His Britannic Majesty's aforesaid territories, west, and within three hundred miles of the Lake of the Woods, in the aforesaid territories of the United States, to the River Mississippi, in order to enjoy the benefit of the navigation of that river with their goods, effects, and merchandise, whose importation into the said States shall not be entirely prohibited, on the payment of the same duties as would be payable on the importation of the same into the Atlantic ports of the said States, and on conforming with the usual custom-house regulations."

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No. 11.—1814, December 1: *Extract from letter, Lord Gambier and Messrs. Goulburn and Adams to Viscount Castlereagh.*

Their second objection was to that part of the VIIIth Article, which claims for the subjects of His Britannic Majesty the free navigation of the Mississippi, and their access to that river. It was stated by the American Plenipotentiaries that they had always considered the Treaty of 1783 as differing from ordinary Treaties in so far as it did not confer but only recognized the advantages enjoyed under it both by Great Britain and the United States, and therefore they did not conceive any stipulation to be necessary either to secure to the United States the full enjoyment of the fisheries, or to Great Britain the free navigation of the Mississippi as stipulated in that Treaty. If they were correct, they stated, in their construction of the Treaty (which, however, they knew to be at variance with that of Great Britain), the provision introduced into the VIIIth Article was altogether unnecessary. If, on the contrary, their judgment was incorrect, and the right of the United States to the fisheries, and that of Great Britain to the navigation of the Mississippi, had ceased in consequence of the war, they could not consent to give to Great Britain without an equivalent the advantage of that navigation. On this ground, therefore, they objected altogether to the part of the Article in question, but they stated that if Great Britain was disposed to give to the United States the enjoyment of the fisheries as possessed by them under the former Treaty, that they were willing to accept it as an equivalent, or to discuss any other which Great Britain might be disposed to offer. Upon our stating that the true equivalent for the navigation of the Mississippi was to be found in the preceding part of the Article, which not only defined a boundary to the dominions of both nations in that quarter, but provided for a considerable accession of territory to the United States in a northwesterly direction, they at the same time that they declined to consider the definition of boundary to be an advantage, denied any accession of their territory to be the result of that Article. They, however, professed their readiness to omit that Article altogether. At the close of the discussion they delivered to us, as a Memorandum, the inclosed amendment to the VIIIth Article, founded upon the principle of their acceptance of the fisheries as an equivalent for yielding the navigation of the Mississippi, to which Memorandum, or to the substance of it they expressed themselves ready to subscribe. As the American Plenipotentiaries have through the whole course of the negotiation taken great pains to describe the Treaty of 1783 as in their view of the subject only recognising and not conferring the privileges of using any territory within the British jurisdiction for purposes connected with the fisheries, we thought we saw an advantage in obtaining from them the offer to Great Britain of any equivalent for their enjoyment of this privilege, inasmuch as it afforded a proof that they considered it as purely of a conventional nature.



142 No. 12.—1814, December 1: Extract from Mr. J. Q. Adams' *Memoirs referring to a Conference with the British Negotiators.*

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The British Government now propose a line due west, in the 49th parallel of latitude, with an additional clause, that the British shall have the free navigation of the Mississippi, and free access to it through our territories. With regard to the first, the right was *chandise*. I observed that we proposed to strike out this clause; that it consisted of two parts: first, the navigation of the river for his Britannic Majesty's subjects, and secondly, the access to it for them through our territories. With regard to the first, the right was stipulated for British subjects by the Treaty of Peace of 1783. We had stated in our note, sent with our project, that we considered that Treaty of 1783 as bearing a peculiar character, and that it was not liable, like ordinary treaties, to be abrogated by a subsequent war; that the American Government had considered the rights and liberties secured by it to the people of the United States as requiring no new and additional stipulation, and had therefore not authorized us to bring them into discussion. To this part of our note the British Plenipotentiaries had made no reply. We knew not whether their silence was owing to the acquiescence of their Government in the principle we had advanced, or to some other cause.

Lord Gambier said, "No, no."

But, continued I, the British right to navigate the Mississippi stands on the same foundation—the Peace of 1783. We admit that if our principle is good to us for the fisheries within the British jurisdiction, it is good for the British right to navigate the Mississippi within our jurisdiction. If the British Government so considers them, there is no need of a new stipulation in either case. But by asking a new one for the Mississippi, it was to be inferred that Great Britain considered the rights on both sides to be forfeited by the war, and she now asked a new right to navigate the Mississippi without offering for it any equivalent. If a new engagement was necessary for one of the privileges, it was necessary for the other, and we have prepared an article which we would leave with them to restore both. As to their access to the Mississippi through our territories, if the right to navigate the river was granted, access to it by one road must be allowed, but it would be obviously necessary to guard it by a provision for the collection of duties; and if a general access, without limitation of place, was to be granted, we thought a reciprocal right would be necessary for the people of the United States through the British territories to the St. Lawrence, and the free navigation of the river.

This observation, that they were asking for a new right, without offering an equivalent, appeared to take the British Plenipotentiaries altogether by surprise.

Mr. Gallatin told them that if they considered the remainder of the article, the 49th parallel of latitude, an equivalent, he wished them to understand that we attached no importance to it at all. It would, indeed, be a convenience to have the boundary settled, but the lands there were of so little value, and the period when they might be settled was so remote, that we were perfectly willing that the boundary there should remain as it is now, and without any further

arrangement. If it was agreeable to them, we had no sort of objection to striking out the whole of the eighth article.

Mr. Goulburn said that as by agreeing to the west line, in the latitude 49, they gave up all claim to any possessions on the Mississippi, it was necessary to stipulate for the right of navigation on the river, and for access to it through our territories. It was of no use to them at present, but it might eventually be of some advantage to them. It was a provision for futurity rather than for the present time.

I said that whatever it might be, it was a privilege to which their Government appeared to attach considerable importance, and they could not expect it would be granted by the United States without an equivalent.

Goulburn said they had no authority to agree to our article, and they must refer it to their Government. The whole treaty must be taken together, and the equivalent must be found in the concessions of Great Britain in the other articles. Dr. Adams expressed the same idea, and Lord Gambier said "Yes, yes, yes."

Mr. Gallatin told them that there was no concession of Great Britain in any of the other articles. We had insisted upon the mutual restoration of territory, and had invariably declined treating on any other basis. We should by that only get back our own, and we should restore to Great Britain what was hers. As to all the articles for the settlement of boundary, they might be mutually useful, but we had no particular interest in them. We had accepted the mode of settlement proposed by Great Britain instead of our own, and we were quite willing, if she desired it, to strike out every one of those articles, but we could not admit this unexpected claim without some equivalent.

Mr. Goulburn said they had informed us in their first note that the claim would be made.

Mr. Gallatin replied they had; but that in their note of 21st September, to which we had since been expressly referred by them, as containing the *whole* of their demands, it was not mentioned.

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143 No. 13.—1814, December 10: *Extract from Protocol of Conference.*

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The British plenipotentiaries then stated that with respect to the 8th article, their Government offered in lieu of the American proposals to retain the amended article as far as the words, "Stony mountains," and insert the following stipulation:

His Britannic Majesty agrees to enter into negotiation with the United States of America, respecting the terms, conditions, and regulations under which the inhabitants of the said United States shall have the liberty of taking fish on certain parts of the coast of Newfoundland, and other of His Britannic Majesty's dominions in North America, and of drying and curing fish, in the unsettled bays, harbours, and creeks of Nova Scotia, Magdalen Islands, and Labrador; as stipulated in the latter part of the third article of the treaty of 1783, in consideration of a fair equivalent to be agreed upon between His Majesty and the

said United States, and granted by the said United States, for such liberty as aforesaid.

The United States of America agree to enter into negotiation with His Britannic Majesty respecting the terms, conditions, and regulations under which the navigation of the river Mississippi from its source to the ocean, as stipulated in the eighth article of the treaty of 1783, shall remain free and open to the subjects of Great Britain, in consideration of a fair equivalent, to be agreed upon between His Majesty and the United States, and granted by His Majesty.

Received by the American plenipotentiaries for consideration.

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No. 14.—1814, December 10: *Extract from Mr. J. Q. Adams' Memoirs referring to a Conference with the British Negotiators.*

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Dr. Adams said that, as to that, the views of the two Governments might be matter of controversy, but the British Government were willing to leave that part of the article as it stood. They did not assent to either of the alternatives—to leave out the whole article, or to strike out simply the last paragraph, or to strike it out and substitute the provision we had proposed, confirming their rights to navigate the Mississippi, and our rights to the fisheries within their jurisdiction. But they would agree to strike it out, offering a substitute of their own. This was, that Great Britain agreed to negotiate with the United States for granting the fisheries within the British jurisdiction for an equivalent to be granted by the United States; and that the United States agreed to negotiate with Great Britain for granting to British subjects the right to navigate the Mississippi for an equivalent to be granted by Great Britain.

Mr. Baker read this article, and it was left with us for consideration.

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No. 15.—1814, December 10: *Extract from Mr. J. Q. Adams' Memoirs relating a subsequent consultation with his Colleagues.*

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Mr. Gallatin said that the only object they could have in offering their present proposal relative to the Mississippi and the fisheries was to beat us off from our own ground. The stipulation that the parties will negotiate hereafter amounts to nothing, but it admits that both the rights secured by the Peace of 1783 are forfeited.

Mr. Bayard said they had precisely inverted our proposition. We had offered the navigation of the Mississippi as the equivalent for the fisheries in their jurisdiction; they offer to abandon the navigation if we will abandon that part of the fisheries.

Mr. Gallatin said that we should certainly lose that part of the fisheries; that our ground for claiming them was untenable, and we never could support it; that he was very sorry it had ever been stipulated in the Peace of 1783, and he would not have accepted it as an offer.

I told him that my name was to an official paper assuming the ground which he now pronounced untenable, and so was his.

He said that we had only assumed it as the principle upon which our Government had instructed us not to bring the fisheries into discussion; that he did not consider himself as pledged to it at all as his own opinion.

144 I told him that I was pledged to it as mine; and believed the ground to be perfectly tenable and solid. I was confident it could be supported, too, for our people would exercise it, and could not be prevented from exercising it, without the constant maintenance of an armed force to drive them from it far more expensive than the object would be worth, and more than Great Britain would maintain. I added that the present British proposition proved most clearly to me two things: one, that *they* did not consider our ground in regard to the fisheries as weak or untenable, since they offered to abandon all pretensions to the right of navigating the Mississippi if we would give up our claim to that part of the fisheries, such as it is; the other, that *they* considered that part of our fishing rights as more than an equivalent for the navigation of the Mississippi, since we had offered to continue both, the one for the other, which they declined, and proposed to us in its stead to abandon both the one for the other.

Mr. Gallatin admitted the correctness of my first inference, but Mr. Clay disputed the second. He said the offer of the British to abandon both rights did not prove that they thought ours worth more than theirs, but that they could obtain more for conceding it.

We adjourned to meet again at eleven to-morrow morning.

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No. 16.—1814, December 11: *Extract from Mr. J. Q. Adams' Memoirs referring to a Conference with his Colleagues.*

Mr. Gallatin said it was an extraordinary thing that the question of peace or war now depended solely upon two points, in which the people of the State of Massachusetts alone were interested—Moose Island, and the fisheries within British jurisdiction.

I said that was the very perfidious character of the British propositions. They wished to give us the appearance of having sacrificed the interests of the Eastern section of the Union to those of the Western, to enable the disaffected in Massachusetts to say, the Government of the United States has given up *our* territory and *our* fisheries merely to deprive the British of their right to navigate the Mississippi.

Mr. Russell said it was peculiarly unfortunate that the interests thus contested were those of a disaffected part of the country.

Mr. Clay said that he would do nothing to satisfy disaffection and treason; he would not yield anything for the sake of them.

"But," said I, "you would not give disaffection and treason the right to say to the people that their interests had been sacrificed?"

He said, "No." But he was for a war three years longer. He had no doubt that three years more of war would make us a warlike people, and that then we should come out of the war with honor. Whereas at present, even upon the best terms we could possibly obtain, we shall have only a half-formed army, and half retrieve our

military reputation. He was playing *brag* with the British Plenipotentiaries; they had been playing *brag* with us throughout the whole negotiation; he thought it was time for us to begin to play *brag* with them. He asked me if I knew how to play *brag*. I had forgotten how. He said the art of it was to beat your adversary by holding your hand, with a solemn and confident phiz, and outbragging him. He appealed to Mr. Bayard if it was not.

"Ay," said Bayard; "but you may lose the game by bragging until the adversary sees the weakness of your hand." And Bayard added to me, "Mr. Clay is for bragging a million against a cent."

I said the principle was the great thing which we could not concede; it was directly in the face of our instructions. We could not agree to it, and I was for saying so, positively, at once. Mr. Bayard said that there was *nothing* left in dispute but the principle. I did not think so.

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No. 17.—1814, December 11: Extract from Mr. J. Q. Adams' *Memoirs referring to a Conference with the British Negotiators.*

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We then passed on to the substitute offered for the last paragraph of the eighth article. It is a stipulation to negotiate hereafter for the fisheries within British jurisdiction, and for the navigation of the Mississippi by British subjects, for fair equivalents.

We stated that we could not admit this substitute. As a mere engagement to negotiate hereafter, it amounted to nothing. The parties could always negotiate, if they should both be so inclined; and if either should be averse to it, negotiation would be unavailing, since it would be in its power, by demanding an equivalent which  
145 the other would not grant, to make it abortive. The only effect then of the stipulation would be, the abandonment by us of the ground upon which we claimed the right to the fisheries. We considered the entire Treaty of 1783 not as an ordinary treaty, liable to be abrogated by a subsequent war between the parties, but as a compact containing the terms upon which two parts of one people mutually agreed to constitute two independent nations. By that treaty British subjects were entitled to the right of navigating the Mississippi. Our principle recognized the continuance of that right; Great Britain, however, had asked of us a new stipulation to confirm it. If we agreed to it, a corresponding stipulation became necessary, to confirm our right to that part of the fisheries. We asked no new stipulation in either case. We did not ask of Great Britain to abandon her construction of the treaty. But this demand on her part was a new claim, brought forward after we had been expressly assured that the British note of 21st October contained *all* they had to ask.

Lord Gambier said that they did not consider the fisheries within their jurisdiction as rights, but merely as privileges granted.

Dr. Adams said that it would be very easy to draw a proviso by which it should be agreed to negotiate upon the two subjects, and yet without implying an abandonment on the part of the United States of their claim.

I said, if he thought it so easy, I would thank him to undertake it. I did not believe it possible. We had drawn up, and now proposed, a general article founded on a precedent in the Treaty of 1794, engaging to negotiate upon all the subjects of difference unadjusted, which would include those of the Mississippi navigation, and the fisheries within the British jurisdiction.

They read our article, and immediately rejected it, finding the word *commerce* in it.

Mr. Gallatin proposed to leave that word out.

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Mr. Bayard was for conceding the point respecting the islands in Passamaquoddy Bay, and for standing out to the last extremity upon that of the fisheries, even if we should break upon it. Immediately after dinner, Mr. Gallatin advised the young gentlemen to go and dress for the ball, and we continued to discuss the subject among ourselves until seven o'clock. Mr. Gallatin said he was, like myself, halting between two opinions, and unable to bring his mind to a conclusion which course would be the best. He must sleep upon it.

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No. 18.—1814, December 13: Extract from Mr. J. Q. Adams' Memoirs.

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... Mr. Clay was for persisting in the rejection of both the British demands, but with the determination finally to yield both. He thought that by insisting equally upon both we should most probably obtain a concession upon one.

My draft had insisted upon both, with an intimation that if the case of the islands should be made an ultimatum, we should rather subscribe to it, though without authority, than break off the negotiation, but that we could not concede the point of the fisheries.

Mr. Bayard was for giving up explicitly and without qualification the islands; and he was prepared to be much more flexible upon the fisheries than he had been yesterday.

Mr. Russell declared himself in favor of my draft, but was for yielding eventually, if necessary, upon both the points.

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No. 19.—1814, December 13, 14: Extract from Mr. J. Q. Adams' Memoirs.

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We all dined with the British Plenipotentiaries. There was no other company present, and the party was more than usually dull, stiff, and reserved. Mr. Goulburn attempted to be courteous, and told me he hoped I should pay a visit to England after we had finished here. I said I certainly should, if they would permit me. Mr. Clay had some conversation with him, and with Lord Gambier. He expressed a wish that we could come to a conclusion without a new reference to England, which I believe to be impossible. Lord Gambier impressed him with the belief that they would ultimately insist

upon our subscribing to an article abandoning our claim by the Treaty of 1783 to the fisheries within British jurisdiction. Lord Gambier said to him that we surely could not rely upon that as a right. Mr. Clay said he did not wish to enter upon that discussion. Lord Gambier said that if we should not make the stipulation, our fishermen would continue the practice, and that would produce a new quarrel; that there had been many complaints against our fishermen, and representations made, to which the British Government were obliged to pay attention. Mr. Clay therefore wished us to  
 146 reconsider our determination, and still to insist upon both the open points for the sake of obtaining the concession upon one. It appears to me, by his own account of his conversation with Lord Gambier, and particularly by declining to discuss our claim of right upon the construction of the treaty, he gave our adversaries encouragement to adhere upon the point of the fisheries as well as upon the other.

14th. Began upon the journal of the day before yesterday, and wrote until eleven, the hour of our mission meeting, which was again held in my chamber. I had proposed several alterations, chiefly erasures from Mr. Gallatin's new draft of the note to the British Plenipotentiaries. The most important was one in which he expressed our willingness to agree to an article for negotiating hereafter concerning the Mississippi navigation and the American liberties in the fisheries, provided our claim to those liberties by our construction of the Treaty of 1783 should be in nowise considered as impaired. thereby. Mr. Bayard had proposed an additional amendment, stating that we were forbidden by our instructions to enter upon a discussion respecting the fisheries. I had intended to propose the same amendment, but omitted it merely from an apprehension that it would not be adopted. I supported that proposed by Mr. Bayard, but he himself did not, and it was not admitted.

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No. 20.—1814, December 13: *Letter, Lord Gambier and Messrs. Goulburn and Adams to Viscount Castlereagh.*

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In reference to the 8th article, the American Plenipotentiaries stated that they were not authorised to admit the substitution proposed in the place of the latter clause of it. That they considered it as unnecessary, inasmuch as it did nothing but stipulate for a future negotiation which might equally take place without it, and it neither bound the parties to engage in it nor precluded them from defeating it, if engaged in, by the extravagance of their demands. But they chiefly objected to the language of the substituted article as conveying that their right to the fisheries depended solely on a provision in the Treaty of 1783, and that this Treaty had been annulled by the war—propositions against which they had repeatedly contended, and in which it would be hopeless to expect their acquiescence. That they had no objection to omit the last clause of the 8th article, and to substitute another, if it were possible so to word one, as to make the fisheries and the Mississippi the subjects of future negotiation without prejudice to either party as to the manner in which his rights were derived.

In reply we stated that should they no longer press Great Britain to yield possession of the Passamaquoddy Islands we should be willing to consider any determination of theirs to that effect, in conjunction with such an article as they might frame in relation to the fisheries and Mississippi navigation, provided such an article was really worded so as in our judgment simply to refer those subjects to future negotiation, without tending to preclude either party from acting hereafter on his own view of those subjects. That in making this proposition we went to the very limit of our instructions, if not somewhat beyond them. In justification of the manner in which our propositions had been brought forward we remarked that it was neither unusual nor improper to refer certain subjects to future negotiation, the necessary details of which might tend to postpone the termination of hostilities, and that we considered all subjects involving equivalents as peculiarly liable to this inconvenience.

The most explicit declaration as to the failure of the present war to put an end to the operation of the Treaty of 1783 was made by Mr. Gallatin, but without any grounds of argument in support of it. He merely stated that the United States considered that Treaty to be of such a nature that all its provisions were permanent, and not liable to be, nor capable of being, annulled by a subsequent war, and consequently that no fresh stipulations were required on either side to put the parties in possession of the advantages derivable from its provisions. This declaration has been noticed because it appears somewhat at variance with the note of the American Plenipotentiaries of the 10th ultimo, which derives the right of the United States to the advantages of the Treaty, as well from the nature of the advantages themselves as from the peculiar character of the Treaty by which they were recognised—a term certainly intended to imply that the right to possess them existed before. So little consistency appears in the grounds upon which doctrines of this nature are likely at any time to be rested, that one of the American Plenipotentiaries admitted that the right of the United States to the fisheries, so far as it depended on the treaty of 1783, was put an end to by the war. Though this admission was evidently intended to convey the notion of a pre-existing right to these advantages, yet it is altogether at variance with the declaration that rests them on the peculiar character of that Treaty alone.

We made no scruple on this and on other occasions of stating explicitly that in our view of the subject, all the right which the United States had or could have to the fisheries was derived from the Treaty of 1783 alone; that we could conceive no other source whence they could derive it, nor on what possible grounds it could be contended that the provisions of that Treaty were not put an end to by the present war.

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147 No. 21.—1814, December 14: *Extract from Mr. J. Q. Adams' Memoirs referring to a Conference with his Colleagues with reference to the form of a Reply to the British propositions.*

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The passage which I wished to be stricken out was also retained, and others inserted, expressly and explicitly with the view ultimately



to give up the point if necessary. I contended for Mr. Bayard's amendment, and for erasing the passages which I though objectionable, as long as argument could have any effect.

Mr. Russell at length said that he would insist for the fisheries as long as possible, but he would sooner give them up than continue the war for them. I appealed again to our instructions, and showed them to him. He said he understood them as referring only to the general right, and not to the liberties as within the British jurisdiction. I asked him how they would be construed by our countrymen after we should have given them up. He said he supposed some would construe them as I did, and some as he did. He supposed there would be a great clamor about it, but that must be disregarded. He believed it more for the interest of the country to give up the point rather than continue the war to maintain it.

I finally told my colleagues that I saw the difference between them and me was, that they had determined ultimately to give up the point, and I had not. I believed the ground we had originally taken to be good and solid. I could make no distinction between the different articles of the Treaty of 1783. If I admitted this day that a half of one of its articles was abrogated by the war, I should give the enemy an argument to say to-morrow that the other half is abrogated equally. If we gave up the liberty to-day, we might be called to give up the right to-morrow. Our instructions were in general terms. They authorized no such distinction as that now made, and no new instruction concerning the fisheries has been given us, since our Government knows the pretension of Great Britain.

Mr. Gallatin said he had always thought our ground upon that point untenable, that I had now almost a majority against me, and he did not wish we should commit ourselves to anything precluding us from abandoning our ground at last. Mr. Russell said that he considered everything of a permanent nature and founded on natural right in the Treaty of 1783 as not affected by a subsequent war; but privileges granted by the treaty, and which we should not have enjoyed without it, he thought were abrogated by war.

I said there was no grant of new privileges in the treaty. The liberties, as well as the rights, were merely a continuation of what had always been enjoyed. It was necessary for the fishermen to go to the part of the coast frequented by the fish, and when, by the independence of the United States, it became a foreign jurisdiction, we had a right to reserve the liberty of continuing to fish there, and the circumstance of the jurisdiction alone occasioned the change of the expression.

Mr. Clay said he did not wish to make up his mind upon the subject until it should be absolutely necessary. He said we should make a damned bad treaty, and he did not know whether he would sign it or not; but he could draw in five minutes an article agreeing to negotiate concerning the Mississippi and the fisheries without impairing our claim to them by the Treaty of 1783. He drew an article accordingly, which I read, and told him I had no other objection to it than that it would be instantly rejected by the British Plenipotentiaries. I further said that as they were all determined at last to yield the fishery point, I thought they were wrong not to give it up now and sign the treaty without another reference to England, as well as without my signature. I could not sign it, because I could not consent to give up

that point. But if I were of their opinion, I would make sure of the treaty now. They were setting everything afloat by another reference, and it was arrant trifling to be still cavilling about a point upon which they had resolved ultimately to yield.

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No. 22.—1814, December 14: *Extract from American Note to British Plenipotentiaries, after Conference of December 12.*

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To the stipulation now proposed by the British plenipotentiaries as a substitute for the last paragraph of the eighth article, the undersigned cannot accede.

The proposition made respecting the navigation of the Mississippi, in the alteration first proposed by the British plenipotentiaries to that article, was unexpected. In their note of the 31st of October they had stated that they had brought forward, in their note of the 21st of the same month, all the propositions which they had to offer; and that subject was not mentioned either in this last mentioned note, or in the first conference to which it referred. In order to obviate any difficulty arising from a presumed connection between that subject and that of the boundary proposed by the eighth article, the undersigned expressed their willingness to omit the article altogether. For the purpose of meeting what they believed to be the wishes of the British Government, they proposed the insertion of an article which should recognise the right of Great Britain to the navigation of that river, and that of the United States to a liberty in certain fisheries, which the British Government considered as abrogated by the war. To such an article, which they viewed as merely declaratory, the undersigned had no objection, and have offered to accede. They do not, however, want any new article on either of those subjects; they have offered to be silent with regard to both. To the stipulation now proposed, or to any other, abandoning, or implying the abandonment of any right in the fisheries claimed by the United States, they cannot subscribe. As a stipulation merely that the parties will hereafter negotiate concerning the subjects in question, it appears also unnecessary. Yet to an engagement, couched in general terms, so as to embrace all the subjects of difference not yet adjusted, or so expressed as to imply in no manner whatever an abandonment of any right claimed by the United States, the undersigned are ready to agree.

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No. 23.—1814, December 19: *Letter, Earl Bathurst (British Secretary of State for the Colonies) to Lord Gambier, Mr. Goulburn, and Dr. Adams.*

(No. 17,)

FOREIGN OFFICE, December 19, 1814.

MY LORD AND GENTLEMEN, I had this morning the honor of receiving your despatch of the 14th, enclosing the note presented on that day, by the Commissioners of the United States, and desiring instructions thereupon.

With regard to the alteration proposed in the 1st article, whereby the occupation of the Islands in Passamaquoddy Bay may be reserved to us, there is no objection to the proposition contained in the American note, except so far as relates to the surrender of such islands to the United States, if no decision shall have been agreed upon, within a given number of years. This stipulation might give to the United States an interest to postpone any decision on the subject.

There would be no objection to a stipulation by which it should be provided that the right to the islands in Passamaquoddy Bay should be that point of reference on which the Commissioners should be required first to consider and decide.

With respect to the discussion which has grown out of the latter part of the 8th article, the Prince Regent regrets to find that there does not appear any prospect of being able to arrive at such an arrangement with regard to the fisheries, as would have the effect of coming to a full and satisfactory explanation on that subject.

As this appears however, now to be the only remaining point on which any difficulty exists, he is unwilling to protract by a prolongation of the discussion the period, when the war between His Majesty and the United States may be happily terminated.

You will therefore present a note in which, after referring to the language held by you on this subject, from the very commencement of the negotiation, in which you stated explicitly, that the British Commissioners did not intend to grant gratuitously to the United States the privileges formerly granted by Treaty to them of fishing within the limits of the British sovereignty, and of using the shores of the British territories for purposes connected with the fisheries, you will state that, as there does not appear any prospect of agreeing upon an article, wherein that question may be satisfactorily adjusted, you are authorised to accept the proposition, which the Commissioners of the United States proposed in the Protocol of the 9th December, wherein they expressed their readiness to omit the Eighth article altogether.

It will not be necessary for you to insist on the article entitled "An Article relative to the Right of preventing Suits in the Courts of Justice," as we rely on the courts of justice being open in the United States, by which the just claims of British subjects may be fairly prosecuted.

I am, &c.

BATHURST.

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No. 24.—1814, December 22: *Extract from Reply of British Plenipotentiaries to American Ministers.*

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So far as regards the substitution proposed by the undersigned for the last clause of the 8th article, as it was offered solely with the hope of attaining the object of the amendment tendered by the American plenipotentiaries at the conference of the 1st instant, no difficulty will be made in withdrawing it.

The undersigned, returning to the declaration made by them at the conference of the 8th of August, that the privileges of fishing within the limits of the British sovereignty, and of using the British

territories for purposes connected with the fisheries, were what  
 149 Great Britain did not intend to grant without equivalent, are  
 not desirous of introducing any article upon the subject.

With a view of removing what they consider as the only objection to the immediate conclusion of the treaty, the undersigned agree to adopt the proposal made by the American plenipotentiaries at the conference of the 1st instant, and repeated in their last note, of omitting the 8th article altogether.

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No. 25.—1814, December 22: *Extract from Mr. J. Q. Adams' Memoirs.*

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After returning home I walked around the Coupure, and, as I was coming back, met in the street Mr. Bayard, who told me that the answer from the British Plenipotentiaries to our last note had been received; that it accepted our proposal to say nothing in the treaty about the fisheries or the navigation of the Mississippi, and, indeed, placed the remaining points of controversy at our own disposal. As soon as I came into my chamber, Mr. Gallatin brought me the note. It agrees to be silent upon the navigation of the Mississippi and the fisheries, and to strike out the whole of the eighth article, marking the boundary-line from the Lake of the Woods westward. They also refer again to their declaration of the 8th of August, that Great Britain would not hereafter grant the liberty of fishing, and drying and curing fish, within the exclusive British jurisdiction, without an equivalent. They accepted our proposed paragraph respecting the islands in Passamaquoddy Bay, with the exception of a clause for their restitution if the contested title to them should not be settled within a limited time. Instead of which, they gave a declaration that no unnecessary delay of the settlement should be interposed by Great Britain.

Mr. Gallatin asked me whether I thought, as they had referred to their declaration of 8th August concerning the fisheries, it would be necessary to write a note referring again to our construction of the Treaty of 1783, and to our right to the fisheries under it. I said that as we had twice stated it, and in terms peculiarly strong in our last note, I did not think any further written declaration upon the subject necessary. Mr. Gallatin asked me to write immediately a note to Mr. Boyd, requesting him to be himself, and to direct the captain of the *Transit* to be, ready to start at a moment's notice, which I did.

Mr. Clay soon after came into my chamber, and, on reading the British note, manifested some chagrin. He still talked of breaking off the negotiation, but he did not exactly disclose the motive of his ill-humor, which was, however, easily seen through. He would have much preferred the proposed 8th article, with the proposed British paragraph, formally admitting that the British right to navigate the Mississippi, and the American right to the fisheries within British jurisdiction, were both abrogated by the war. I think his conversation with Lord Gambier on the subject last week, at their dinner, the day before we sent our note, had the tendency to induce

the British to adhere to their paragraph, and that Clay is disappointed at their having given it up; and he has so entire an ascendancy over Mr. Russell, though a New England man and claiming to be a Massachusetts man, that Russell repeatedly told me last week, when I assured him that I would not sign the treaty with an article admitting that our right to any part of the fisheries was forfeited, that he should be sorry to sign a treaty without me, but that he did not think that part of the fisheries an object for which the war should be continued; that he was for insisting upon it as long as possible, but for giving it up at last, if the British would not sign without it. We agreed to meet at half-past seven o'clock this evening.

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No. 26.—1814, December 25: *Extract from Report of American Plenipotentiaries to United States Secretary of State.*

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At the first conference, on the 8th of August, the British plenipotentiaries had notified to us that the British Government did not intend henceforth to allow to the people of the United States, without an equivalent, the liberties to fish and to dry and cure fish within the exclusive British jurisdiction, stipulated in their favour by the latter part of the third article of the treaty of peace of 1783. And in their note of the 19th August, the British plenipotentiaries had demanded a new stipulation, to secure to British subjects the right of navigating the Mississippi; a demand which, unless warranted by another article of that same treaty of 1783, we could not perceive that Great Britain had any colourable pretence for making. Our instructions had forbidden us to suffer our right to the fisheries to be brought into discussion, and had not authorised us to make any distinction in the several provisions of the third article of the treaty of 1783, or between that article and any other of the same treaty. We had  
 150 no equivalent to offer for a new recognition of our right to any part of the fisheries, and we had no power to grant any equivalent which might be asked for it by the British Government. We contended that the whole treaty of 1783 must be considered as one entire and permanent compact, not liable, like ordinary treaties, to be abrogated by a subsequent war between the parties to it; as an instrument recognising the rights and liberties enjoyed by the people of the United States as an independent nation, and containing the terms and conditions on which the two parts of one empire had mutually agreed, thenceforth, to constitute two distinct and separate nations. In consenting, by that treaty, that a part of the North American continent should remain subject to the British jurisdiction, the people of the United States had reserved to themselves the liberty, which they had ever before enjoyed, of fishing upon that part of its coasts, and of drying and curing fish upon the shores, and this reservation had been agreed to by the other contracting party. We saw not why this liberty, then no new grant, but the mere recognition of a prior right always enjoyed, should be forfeited by war, any more than any other of the rights of our national independence; or why

we should need a new stipulation for its enjoyment more than we needed a new article to declare that the King of Great Britain treated with us as free, sovereign, and independent States. We stated this principle in general terms to the British plenipotentiaries, in the note which we sent to them with our *projet* of the treaty, and we alleged it as the ground upon which no new stipulation was deemed by our Government necessary to secure to the people of the United States all the rights and liberties stipulated in their favour by the treaty of 1783. No reply to that part of our note was given by the British plenipotentiaries, but, in returning our *projet* of a treaty, they added a clause to one of the articles, stipulating a right for British subjects to navigate the Mississippi. Without adverting to the ground of prior and immemorial usage, if the principle were just that the treaty of 1783, from its peculiar character, remained in force in all its parts, notwithstanding the war, no new stipulation was necessary to secure to the subjects of Great Britain the right of navigating the Mississippi, so far as that right was secured by the treaty of 1783, as, on the other hand, no stipulation was necessary to secure to the people of the United States the liberty to fish, and to dry and cure fish, within the exclusive jurisdiction of Great Britain. If they asked the navigation of the Mississippi as a new claim, they could not expect we should grant it without an equivalent; if they asked it because it had been granted in 1783, they must recognise the claim of the people of the United States to the liberty to fish and to dry and cure fish, in question. To place both points beyond all future controversy, a majority of us determined to offer to admit an article confirming both the rights, or we offered at the same time to be silent in the treaty upon both, and to leave out altogether the article defining the boundary from the Lake of the Woods westward. They finally agreed to this last proposal, but not until they had proposed an article stipulating for a future negotiation for an equivalent to be given by Great Britain for the navigation of the Mississippi, and by the United States for the liberty as to the fisheries within British jurisdiction. This article was unnecessary with regard to its professed object, since both Governments had it in their power, without it, to negotiate upon these subjects if they pleased. We rejected it, although its adoption would have secured the boundary of the forty-ninth degree of latitude west of the Lake of the Woods, because it would have been a formal abandonment, on our part, of our claim to the liberty as to the fisheries, recognised by the treaty of 1783.

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No. 27.—1814, December 25: *Extract from Mr. J. Q. Adams' Memoirs.*

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In mentioning to the Secretary of State the principle on which we had relied respecting the fisheries, I had stated that we *considered* the treaty of 1783 as a permanent contract, no part of which was liable to be abrogated by the subsequent war. Mr. Clay, with the assent of Mr. Russell, had altered it to read, we *thought it might* be considered, and Russell afterwards had written it, we *contended it might* be considered. Mr. Russell made out the fair copy of the des-

patch to be sent. On reading it over, to compare it with the original draft and amendments, I perceived this alteration, and immediately objected to it. I insisted upon substituting the word *must* for *might*, to read, we contended the treaty of 1783 *must* be considered, etc. Mr. Russell and Mr. Bayard agreed to this amendment.

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No. 28.—1815, February 11: *Separate Report of Mr. Jonathan Russell, one of the United States Negotiators, to the United States Secretary of State.*

(Private.)

PARIS, 11th February, 1815.

SIR: In conformity with the intimation contained in my letter of the 25th of December, I now have the honour to state to you 151 the reasons which induced me to differ from a majority of my colleagues on the expediency of offering an article confirming the British right to the navigation of the Mississippi, and the right of the American people to take and cure fish in certain places within the British jurisdiction.

The proposition of such an article appeared to be inconsistent with our reasoning to prove its absolute inutility. According to this reasoning, no new stipulation was any more necessary, on the subject of such an article, than a new stipulation for the recognition of the sovereignty and independence of the United States.

- The article proposed appeared also to be inconsistent with our instructions, as interpreted by us, which forbid us to suffer our right to the fisheries to be brought into discussion; for, it could not be believed that we were left free to stipulate on a subject which we were restrained from discussing, and that an argument, and not an agreement, was to be avoided. If our construction was indeed correct, it might not, perhaps, be difficult to show that we have not, in fact, completely refrained from the interdicted discussion.

At any rate, the proposal of the article in question was objectionable, inasmuch as it was incompatible with the principles asserted by a majority of the mission, and with the construction which this majority had adopted on that part of our instructions which related to the fisheries. If the majority were correct in these principles, and in this construction, it became us to act accordingly; if they were not correct, still it was unnecessary to add inconsistency to error.

I freely confess, however, that I did not accord with the majority, either in their view of the treaty of 1783, whence they derived their principles, or of our instructions; and that my great objection to proposing the article did not arise from an anxiety to reconcile our conduct with our reasoning and declarations.

I could not believe that the independence of the United States was derived from the treaty of 1783; that the recognition of that independence, by Great Britain, gave to this treaty any peculiar character, or that such character, supposing it existed, would necessarily render this treaty absolutely inseparable in its provisions, and make it one entire and indivisible whole, equally imperishable in all its parts, by any change which might occur in the relations between the contracting parties.

The independence of the United States rests upon those fundamental principles set forth and acted on by the American Congress, in the declaration of July, 1776, and not on any British grant in the treaty of 1783, and its era is dated accordingly.

The treaty of 1783 was merely a treaty of peace, and therefore subject to the same rules of construction as all other compacts of this nature. The recognition of the independence of the United States could not well have given to it a peculiar character, and excepted it from the operation of these rules. Such a recognition, expressed or implied, is always indispensable on the part of every nation with whom we form any treaty whatsoever. France, in the treaty of alliance, long before the year 1783, not only expressly recognised, but engaged effectually to maintain, this independence; and yet this treaty, so far from being considered as possessing any mysterious peculiarity, by which its existence was perpetuated, has, even without war, and although a part of it contained words of perpetuity and was unexecuted, long since entirely terminated.

Had the recognition of our independence by Great Britain given to the treaty of 1783 any peculiar character, which it did not, still that character could have properly extended to those provisions only which affected that independence. All those general rights, for instance, of jurisdiction, which appertained to the United States in their quality as a nation, might, so far as that treaty was declaratory of them, have been embraced by such peculiarity, without necessarily extending its influence to mere special commercial liberties and privileges, or to provisions long since executed, not indispensably connected with national sovereignty, or necessarily resulting from it.

The liberty to take and cure fish, within the exclusive jurisdiction of Great Britain, was certainly not necessary to perfect the jurisdiction of the United States; and there is no reason to believe that such a liberty was intended to be raised to an equality with the general right of fishing within the common jurisdiction of all nations, which accrued to us as a member of the great national family. On the contrary, the distinction between the special liberty and the general right appears to have been well understood by the American ministers who negotiated the treaty of 1783, and to have been clearly marked by the very import of the terms which they employed. It would evidently have been unwise in them, however ingenious it may be in us, to exalt such a privilege to the rank of a sovereign right, and thereby to have assumed the unnecessary and inconvenient obligation of considering such a liberty to be an indispensable condition of our national existence, and thus rendering that existence as precarious as the liberty itself. They could not have considered a privilege, which they expressly made to depend, to a very considerable extent, for its continuance, on the events and private interests, as partaking of the character and entitled to the duration of the inherent properties of sovereignty. The settlement of the shores might, at any time, have been effected by the policy of the British government, and would have made the assent of British subjects, under the influence of that policy, necessary to the continuance of a very considerable portion of that liberty. They could not have meant thus to place, within the control of a foreign government and its subjects, an integral part, as we now affect to consider this privilege, of our national rights.



It is from this view of the subject that I have been constrained to believe that there was nothing in the treaty of 1783, which could, essentially, distinguish it from ordinary treaties, or rescue it, on account of any peculiarity of character, from the *jura belli*, or from the operation of those events on which the continuation or termination of such treaties depends. I was, in like manner, compelled to believe, if any such peculiarity belonged to those provisions, in that treaty, which had an immediate connexion with our independence, 152 that it did not necessarily affect the nature of the whole treaty, or attach to a privilege which had no analogy to such provisions, or any relation to that independence.

I know not, indeed, any treaty, or any article of a treaty, whatever may have been the subject to which it related, or the terms in which it was expressed, that has survived a war between the parties, without being specially renewed, by reference or recital, in the succeeding treaty of peace. I cannot, indeed, conceive of the possibility of such a treaty or such an article; for, however clear and strong the stipulations for perpetuity might be, these stipulations themselves would follow the fate of ordinary unexecuted engagements, and require, after a war, the declared assent of the parties for their revival.

We appear, in fact, not to have had an unqualified confidence in our construction of the treaty of 1783, or to have been willing to rest exclusively on its peculiar character our title to any of the rights mentioned in it, and much less our title to the fishing liberty in question. If hostilities could not affect that treaty, or abrogate its provisions, why did we permit the boundaries assigned by it to be brought into discussion, or stipulate for a restitution of all places taken from us during the present war? If such restitution was secured by the mere operation of the treaty of 1783, why did we discover any solicitude for the *status ante bellum*, and not resist the principle of *uti possidetis* on that ground?

With regard to the fishing privilege, we distinctly stated to you in our letter of the 21st of December, that, "at the time of the treaty of 1783, it was no new grant, we having always before that time enjoyed it," and thus endeavoured to derive our title to it from prescription. A title, derived from immemorial usage, antecedent to 1783, could not well owe its origin or its validity to a compact concluded at that time, and we could, therefore, in this view of the subject, correctly say that this privilege was no new grant; that is, that our right to the exercise of it was totally independent of such compact. If we were well-founded, however, in the assertion of our prescriptive title, it was quite unnecessary to attempt to give a kind of charmed existence to the treaty of 1783, and to extend its undefinable influence to every article of which it was composed, merely to preserve that title which we declared to be in no way derived from it, and which had existed, and, of course, could exist, without it.

It was rather unfortunate, too, for our argument against a severance of the provisions of that treaty, that we should have discovered ourselves, a radical difference between them, making the fishing privilege depend on immemorial usage, and, of course, distinct in its nature and origin from the rights resulting from our independence.

We, indeed, throw some obscurity over this subject when we declare to you that this privilege was always enjoyed by us before the treaty of 1783, thence inferring that it was not granted by that treaty,

and in the same sentence and from the same fact, appear also to infer, that it was not to be forfeited by war any more than any other of the rights of our independence, making it thus one of these rights, and of course, according to our doctrine, dependent on that treaty.

There might have been nothing incomprehensible in this mode of reasoning, had the treaty recognised this privilege to be derived from prescription, and confirmed it on that ground. The treaty has, however, not the slightest allusion to the past, in reference to this privilege, but regards it only with a view to the future. The treaty, therefore, cannot be construed as supporting a pre-existing title, but as containing a grant entirely new. If we claim, therefore, under the treaty, we must renounce prescription, and if we claim from prescription, we can derive no aid from the treaty. If the treaty be imperishable in all its parts, the fishing privilege remains unimpaired without a recurrence to immemorial usage; and if our title to it be well-founded on immemorial usage, the treaty may perish without affecting it. To have endeavoured to support it on both grounds, implies that we had not entire confidence in either, and to have proposed a new article, indicates a distrust of both.

It is not, as I conceive, difficult to show that we cannot, indeed, derive a better title to this fishing privilege, from prescription, than from any indestructible quality of the treaty of 1783.

Prescription appears to me to be inapplicable to the parties and to the subject, and to be defective both in fact and effect. As to the parties:—the immemorial enjoyment of a privilege within British jurisdiction, by British subjects, the inhabitants of British colonies, could not well be considered as evidence of a title to that privilege claimed by the citizens of an independent republic, residing within the exclusive jurisdiction of that republic. The people of the United States, as such, could have claimed no special privilege within the dominions of any foreign power from immemorial usage, in 1783, when the longest duration of their own existence in that quality was little more, at the utmost, than the brief period of seven years, which is surely not beyond the memory of man, (*ultra memoriam hominis*). The people of the United States had never, in fact, during that period, enjoyed the fishing privilege a moment; being effectually prevented therefrom by the existing state of hostilities. Nor could the inhabitants of the colonies, originally constituting the United States, even in their colonial condition, acquire against their sovereign any right from long usage or mere lapse of time, (*nullum tempus regi occurrit*). The British sovereign was always competent to regulate and restrain his colonies in their commerce and intercourse with each other, whenever and however he might think proper, and had he forbid his subjects in the province of Massachusetts, to fish and dry and cure fish in the bays, harbours, and creeks of Labrador, which, by the way, had not immemorially belonged to him, it is not to be imagined that they would have conceived themselves discharged from the obligation of submitting, on account of any pretended right from immemorial usage. The fishing privilege, therefore, enjoyed by British subjects within British jurisdiction, could give no permanent and independent right to those subjects themselves, and, *a fortiori*, no such right to the citizens of the United States, claiming under a different estate and in a different capacity. Great Britain might, indeed, as well prescribe for the prerogatives

153 of her sovereignty over us, as we for any of the privileges which we enjoyed as her subjects.

I do not think it necessary to inquire how far the practice of the people of Massachusetts was the practice of the whole original thirteen United States, or of the United States now, including Louisiana; or how far the immemorial usage of the people of Boston can establish a prescriptive right in the people of New-Orleans. I trust I have said enough to show that prescription is inapplicable to the parties. It is also, I conceive, inapplicable to the subject.

Had the United States, as an independent nation, enjoyed, from time immemorial, the fishing privilege in question, still, from the nature of this privilege, no prescriptive right could have thence been established. A right to fish, or to trade, or to do any other act or thing within the exclusive jurisdiction of a foreign state, is a simple power, a right of mere ability, (*jus mere facultatis*,) depending on the will of such states, and is consequently imprescriptible. An independent title can be derived only from treaty.

I conceive, therefore, that our claim to the fishing privilege, from immemorial usage, is not only unsupported by the fact, but cannot, in effect, result from such usage.

I have, from this view of the subject, been led to conclude, that the treaty of 1783, in relation to the fishing liberty, is abrogated by the war; that this liberty is totally destitute of support from prescription; and that we are, consequently, left without any title to it whatsoever. For I cannot prevail upon myself to seek for such a title in the relative situation of the parties, at the time of negotiating the treaty of 1783, and contend, according to the insinuation contained in our letter to you of the 21st of December, that the jurisdiction of Great Britain over the colonies assigned to her in America, was a grant from the United States, and that the United States, in making this grant, reserved to themselves the privilege in question. Such a pretension, however lofty, is so inconsistent with the circumstances of the case, and with any sober construction which can be given to that treaty, that I shall, I trust, be excused from seriously examining its validity.

Having thus stated some of the reasons which induced me to differ in opinion from a majority of my colleagues, relative to the character of the treaty of 1783, as well as with regard to every other foundation on which they were disposed to rest our title to the fishing privilege, I shall now proceed to explain the causes which influenced me to dissent from them in the interpretation of our instructions.

These instructions forbid us to permit our rights to the trade beyond the Cape of Good Hope, to the fisheries, and to Louisiana, to be brought into discussion. I conceived that this prohibition extended to the general rights only, which affected our sovereignty, and resulted from it, and not to mere special liberties and privileges which had no relation to that sovereignty, either as to its nature or extent.

The right relating to the trade beyond the Cape of Good Hope, was the right which belonged to us as an independent nation, in common with all other independent nations, and not the permission of trading to those parts of the East Indies which were within the exclusive jurisdiction of Great Britain. In like manner, the right to

the fisheries, contemplated by our instructions, was, I conceived, the right, common to all nations, to use the open sea for fishing as well as for navigation, and not to the liberty to fish and cure fish within the territorial limits of any foreign state. The right to Louisiana, which was not to be brought into discussion, was the right to the empire and domain of that region, and not to the right of excluding Great Britain from the navigation of the Mississippi.

How far we conformed to this instruction, with regard to the general right to Louisiana, it is not necessary for me here to inquire; but certainly the majority believed themselves permitted to offer a very explicit proposition with regard to the navigation of its principal river. I believed, with them, that we were so permitted, and that we were likewise permitted to offer a proposition relative to the fishing liberty, and had the occasion required it, to make proposals concerning the trade to the British East Indies. I was persuaded that treating relative to these privileges, or discussing the obligation or expediency of granting or withholding them, respectively, violated in no way our instructions, or affected the general rights which we were forbidden to bring into discussion.

Considering, therefore, the fishing liberty to be entirely at an end, without a new stipulation for its revival, and believing that we were entirely free to discuss the terms and conditions of such a stipulation, I did not object to the article proposed by us because any article on the subject was unnecessary, or contrary to our instructions, but I objected specially to that article, because, by conceding in it the free navigation of the Mississippi, we offered, in my estimation, for the fishing privilege, a price much above its value.

In no view of the subject could I discover any analogy between the two objects, and the only reason for connecting them and making them mutual equivalents for each other, appeared to be because they were both found in the treaty of 1783.

If that treaty was abrogated by the war, as I consider it to have been, any connection between its parts must have ceased, and the liberty of navigating the Mississippi by British subjects must, at least, be completely at an end; for it will not, I trust, be attempted to continue it by a prescriptive title, or to consider it as a reservation, made by the United States, from any grant of sovereignty which, at the treaty of peace, they accorded to Great Britain. If, indeed, it was such a reservation, it must have been intended for our benefit, and, of course, could be no equivalent for the fishing privilege. If it is considered as a reservation made by Great Britain, it will reverse the facts assumed by us in relation to that privilege.

The third article of the treaty of 1783, respecting the fisheries, and the eighth article of that treaty, respecting the Mississippi, had not the slightest reference to each other, and were placed as remote, the one from the other, as the limits of that treaty could well admit. Whatever, therefore, was the cause of inserting the fishing liberty, whether it was a voluntary and gratuitous grant on the  
 154 part of Great Britain, or extorted from her as a condition on which the peace depended, it could have had no relation to the free navigation of the Mississippi.

Besides, the article relative to this river must, from the evident views of the parties at the time, from their supposed relations to each other, and from their known relations to a third power, as to

this river, have been considered of mutual and equal advantage, and furnished no subject for compensation or adjustment in any other provision of that treaty. Both parties believed that this river touched the territories of both, and that, of course, both had a right to its navigation. As Spain possessed both banks of this river, to a considerable distance from its mouth, and one of its banks nearly throughout its whole extent, both parties had an interest in uniting to prevent that power from obstructing its navigation. Had not the article been intended to engage the parties in relation to Spain, they would, probably, have limited it to the navigation of the river as far as their own territories extended on it, and not have stipulated for this navigation to the ocean, which necessarily carried it through the exclusive territories of Spain.

If the circumstances had been, in fact, such as the parties at the time believed them to be, and with a view to which they acted; or had these circumstances subsequently experienced no radical change; Great Britain would have gained now no more than she would have granted by the revival of the article in relation to the Mississippi, and would not, any more than in 1783, have acknowledged any equivalent to be conferred by it for our liberty relative to the fisheries. The circumstances, however, assumed by the parties, at the time, in relation to Great Britain, and from which her rights were deduced, have not only, in part, been discovered not to have existed, but those which did exist have been entirely changed by subsequent events. It has been ascertained that the territories assigned to Great Britain, no where, in fact, reached the Mississippi; and the acquisition of Louisiana by the United States has forever removed the Spanish jurisdiction from that river.

The whole consideration, therefore, on the part of Great Britain, whether derived from her territorial rights, or from her part of the reciprocal obligations relative to Spain having entirely failed, our engagements, entered into on account of that consideration, may be fairly construed to have terminated with it.

In this view of the subject, Great Britain, could have had no title to the navigation of the Mississippi, even if a war had not taken place between the parties. To renew, therefore, the claims of Great Britain, under that article, subject to this construction, would be granting her nothing; and to renew that article, independent of this construction, and without any reference to the circumstances that attended its origin, in 1783, or to the events which have since occurred in relation to it, would be granting her advantages not only entirely unilateral, as it relates to the article itself, but, as I believe, of much greater importance than any which we could derive from the liberty relative to the fisheries.

If the article which we offered merely intended to rescue the third and eighth articles of the treaty of 1783, from the operation of the present war, and to continue them precisely as they were immediately prior to this war, the third article being then in full force, and the eighth article being no longer obligatory, we should have attempted to exchange, like General Drummond, the dead for the living.

It is not surprising, therefore, that the British government should, in suspecting such an intention, have rejected our proposition. I was opposed, however, to making the proposition, not only because I was convinced that it was offered with no such intention, but because

I believed it would give to Great Britain the free navigation of the Mississippi, under circumstances, and evidently for an object, which would place it on very distinct grounds from those on which it was placed by the treaty of 1783.

The whole of the Mississippi being now exclusively within the acknowledged jurisdiction of the United States, a simple renewal of the British right to navigate it would place that right beyond the reach of the war, and of every other previous circumstance which might have impaired or terminated it; and the power to grant, on our part, being now complete, the right to enjoy, on hers, under our grant, must be complete also.

It would be absurd to suppose that any thing impossible was intended, and that Great Britain was to be allowed to navigate the Mississippi precisely as she could have navigated it immediately after the treaty of 1783; as if her territories extended to it, and as if Spain was in entire possession of one of its banks and of a considerable portion of the other. The revival of the British right to navigate the Mississippi would be, under existing circumstances, a new and complete grant to her, measured by these circumstances, and thence embracing not only the entire freedom of the whole extent of that river, but the unrestrained access to it across our territories. If we did not intend this, we intended nothing which Great Britain could accept; and, whatever else might have been intended, if not at once rejected by her, would hereafter have been the subject of new and endless controversy. When, however, we connected the revival of the navigation of the Mississippi with the revival of the liberty of taking and curing fish within the British jurisdiction, two things, which never before had any relation to each other, we evidently meant, if we acted in good faith, not only to concede, as well as to obtain something, but also to be understood as conceding an equivalent for what we obtained.

In thus offering the navigation of the Mississippi, and the access to it through our territories, as an equivalent for the fishing liberty, we not only placed both on ground entirely different from that in which they respectively stood in the treaty of 1783, and acted somewhat inconsistently with our own reasoning relative to the origin and immortality of the latter, but we offered to concede much more than we could hope to gain by the arrangement, with whatever view its comparative effects might be estimated.

From the year 1783, to the commencement of the present war, the actual advantages derived from the fishing privilege by the people of the United States, were, according to the best information that I can obtain on the subject, very inconsiderable, and annually experiencing a voluntary diminution.

155 It was discovered that the obscurity and humidity of the atmosphere, owing to almost incessant fogs, in the high northern latitudes, where this privilege was chiefly located, prevented the effectual curing of fish in those regions, and, consequently, lessened very much the value of the liberty of taking them there. By far the greatest part of the fish taken by our fishermen before the present war, was caught in the open sea or upon our own coasts, and cured on our own shores. This branch of the fisheries has been found to be inexhaustible, and has been pursued with so much more certainty and despatch than the privileged portion within the British jurisdiction, that it has not only been generally preferred by our fishermen, but

would probably, on longer experience, have been almost universally used by them. It was to be believed, therefore, that a discontinuance of the privilege of taking and curing fish, within the British jurisdiction, would not, at all, diminish the aggregate quantity taken by the people of the United States, or very materially vary the details of the business. That part of the fisheries which would still have belonged to us as a nation, being exhaustless, would afford an ample field for all the capital and industry hitherto employed in the general business of fishing, or merchandise of fish, and on that field might the few fishermen, who had hitherto used the liberty of taking and curing fish within the jurisdiction of Great Britain, exert their skill and labour without any serious inconvenience. This liberty, liable in a very considerable degree by the terms in which it was granted, to be curtailed by the government and subjects of a foreign state; already growing into voluntary disuse by our own citizens, on account of the difficulties inseparable from it, and absolutely incapable of extension; was totally unnecessary to us for subsistence or occupation, and afforded, in no way, any commercial facility or political advantage. This privilege, too, while it was thus of little or no utility to us, cost Great Britain literally nothing.

The free navigation of the Mississippi, with the necessary access to it, is a grant of a very different character. If it was not heretofore used by Great Britain, it was, perhaps, because she did not consider herself entitled to it, or because the circumstances of the moment suspended its practical utility. The treaty of 1783 stipulated for her the navigation of this river, under the presumption that her territories extended to it, and, of course, could not intend to give her an access to it through our territories. The British possessions to the westward of Lake Erie, being almost entirely unsettled, rendered, perhaps, the free navigation of the Mississippi, for the moment, of little advantage to her, particularly as her right to reach it was at least equivocal; and as, by another treaty, she could carry on trade with our Indians.

This navigation might, indeed, for a long time to come, be of little use to her for all the legitimate purposes of transit and intercourse; but every change that could take place in this respect must increase its importance to her; while every change in the fishing liberty would be to the disadvantage of the United States.

The freedom of the Mississippi, however, is not to be estimated by the mere legitimate uses that would be made of it. The unrestrained and undefined access which would have been inferred from the article which we proposed, would have placed in the hands of Great Britain and her subjects all the facilities of communication with our own citizens, and with the Indians inhabiting the immense regions of our western territory. It is not in the nature of things that these facilities should not have been abused for unrighteous purposes. A vast field for contraband and intrigue would have been laid open, and our western territories would have swarmed with British smugglers and British emissaries. The revenue would have been defrauded by the illicit introduction of English merchandise, and the lives of our citizens, and the security of a valuable portion of our country exposed to Indian hostilities, excited by an uncontrolled British influence. If our instructions to guard against such an influence forbid us to renew the British liberty to trade with our Indians, we certainly

violated the spirit of those instructions in offering the means of exercising that influence with still greater facility and effect than could result from that liberty.

What was there in the fishing liberty, either of gain to us, or loss to Great Britain, to warrant, in consideration of it, a grant to her of such means of fraud and annoyance? What justice or equality was there in exposing to all the horrors of savage warfare the unoffending citizens of an immense tract of territory, not at all benefited by the fishing privilege, merely to provide for the doubtful accommodation of a few fishermen, in a remote quarter, entirely exempt from the danger?

Such have been the reasons which induced me to differ from a majority of my colleagues with regard to the article in question, and which I trust will be thought sufficient, at least, to vindicate my motives.

The unfeigned respect which I feel for the integrity, talents, and judgment of those gentlemen, would restrain me from opposing them on slight grounds, and a deference for their opinions makes me almost fear that I have erred in dissenting from them on the present occasion. I can but rejoice, however, that the article, as proposed by us, was rejected by Great Britain; whatever were her reasons for rejecting it; whether, as above suggested, she suspected some tacit reservation, or want of faith on our part, or supposed, from the price we at once bid for the fishing privilege, that we overrated its value, and might concede for it even more than the navigation of the Mississippi, with all its accessory advantages.

We are still at liberty to negotiate for that privilege in a treaty of commerce, should it be found expedient, and to offer for it an equivalent, fair in its comparative value, and just in its relative effects. In any other way, I trust, we shall not consent to purchase its renewal:

I have the honor to be, with profound respect,

Sir, your faithful and obedient servant, JONA. RUSSELL.

My argument to demonstrate the abrogation of the treaty of 1783, by the present war, and the consequent discontinuance of the fishing privilege, will, I trust, not be ascribed to any hostility to those who are interested in that privilege. I have been always ready, and am still ready, to make every sacrifice for the preservation of that  
156 privilege which its nature and utility can justify; but I have conscientiously believed that the free navigation of the Mississippi was pregnant with too much mischief to be offered indirectly under our construction of the treaty, or directly, as a new equivalent for the liberty of taking and curing fish within the British jurisdiction.

We had three other ways of proceeding:

*First.* To contend for the indestructibility of the treaty of 1783, thence inferring the continuance of the fishing privilege, without saying anything about the navigation of the Mississippi, which would have reserved our right of contesting this navigation on the grounds I have mentioned, specially applicable to it.

*Secondly.* To have considered the treaty at an end, and offered a reasonable equivalent, wherever it might be found, for the fishing privilege.



*Thirdly.* To have made this liberty a *sine qua non* of peace, as embraced by the principle of *status ante bellum*.

To either of these propositions I would have assented, but I could not consent to grant to revive the British right to the navigation of the Mississippi, in order to procure or preserve the fishing liberty.

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No. 29.—1822, May 3: *Extract from Mr. J. Q. Adams' Answer to Mr. Russell.*

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By the third article of the treaty of 1783, it was agreed, that the people of the United States should *continue* to enjoy the fisheries of Newfoundland and the Bay of St. Lawrence, and at all other places in the sea, where the inhabitants of both countries *used at any time theretofore to fish*; and also, that they should have certain fishing liberties, on all the fishing coast within the British jurisdiction of Nova Scotia, Magdalen Islands, and Labrador. The title by which the United States held those fishing rights and liberties were the same. It was the possessory use of the right, or, in Mr Russell's more learned phrase, of the "*jus mereæ facultatis*," at any time theretofore as British subjects, and the acknowledgment by Great Britain of its *continuance* in the people of the United States after the treaty of separation. It was a national right; and, therefore, as much a *right*, though not so immediate an interest, to the people of Ohio and Kentucky, aye and to the people of Louisiana, after they became a part of the people of the United States, as it was to the people of Massachusetts and Maine. The latter had always used it, since they had been British colonists, and the coasts had been in British dominions. But as the settlement of the colonies themselves had not been of time immemorial, it was not, and never was pretended to be, a title by prescription.

Such was the title of the United States to the fisheries—prior possession, and acknowledgment by the treaty of 1783.

The commissioners at Ghent had received from the Secretary of State a letter of instruction, dated 25th of June, 1814, containing the following passage:

Information has been received from a quarter deserving of attention, that the late events in France have produced such an effect on the British government, as to make it probable that a demand will be made at Gothenburg, to *surrender our right to the fisheries*, to abandon all trade beyond the Cape of Good Hope, and to cede Louisiana to Spain. We cannot believe that such a demand will be made; should it be, you will of course, treat it as it deserves. These rights must not be brought into discussion. If insisted on, your negotiations will cease.

Now, it is very true that a majority of the commissioners did construe these instructions to mean, that the right to the fisheries was *not to be surrendered*. They did not subtilize, and refine, and inquire, whether they could not surrender a part, and yet not bring the right into discussion, whether we might not give up a liberty, and yet retain a right; or whether it was an *argument*, or an *agreement*, that was forbidden. They understood that the fisheries *were not to be surrendered*.

The demand made by the British government was first advanced in an artful and ensnaring form. It was by assuming the principle that the right had been forfeited by the war, and by notifying the American commissioners, as they did at the first conference, "that the British government did not intend to *grant* to the United States, gratuitously, the privileges formerly granted by treaty to them, of fishing within the limits of the British sovereignty, and of using the shores of the British territories for purposes connected with the fisheries." Now to obtain the *surrender* of thus much of the fisheries, all that the British plenipotentiaries could possibly desire, was, that the American commissioners should acquiesce in the principle, that the treaty of 1783 was abrogated by the war. Assent to this principle would have been surrender of the right. Mr. Russell, if we can make any thing of his argument, would have *assented*, and surrendered, and comforted himself with the reflection, that, as the right had not been brought into discussion, the instructions would not have been violated.

But, however clearly he expresses this opinion in his letter, and however painfully he endeavours to fortify it by argument, he never did disclose it to the same extent at Ghent. The only way in which it was possible to meet the notification of the British plenipotentiaries, without *surrendering* the rights which it jeopardized, was by denying the principle upon which it was founded. This was done by asserting the principle, that the treaty of Independence of 1783 was of that class of treaties, and the right in question of the character, which are not abrogated by a subsequent war; that the notification of the intention of the British government not to *renew the grant*, could not affect the right of the United States, which had not been forfeited by the war; and that, considering it as still in force, the United States needed no new grant from Great Britain to revive, nor any new article to confirm it.

This principle I willingly admit was assumed and advanced by the American commissioners at my suggestion. I believed it not only indispensably necessary to meet the insidious form in which the British demand of surrender had been put forth; but sound in itself, and maintainable on the most enlarged, humane, and generous principles of international law. It was asserted and maintained by the American plenipotentiaries at Ghent; and if, in the judgment of Mr. Russell, it suffered the fishing liberty to be brought into discussion, at least it did not *surrender the right*.

It was not acceded to by the British plenipotentiaries. Each party adhered to its asserted principle; and the treaty was concluded without settling the interest involved in it. Since that time, and after the original of Mr. Russell's letter of the 11th of February, 1815, was written, the principle asserted by the American plenipotentiaries at Ghent, has been still asserted and maintained through two long and arduous negotiations with Great Britain, and has passed the ordeal of minds of no inferior ability. It has terminated in a new and satisfactory arrangement of the great interest connected with it, and in a substantial admission of the principle asserted by the American plenipotentiaries at Ghent; by that convention of 20th October, 1818, which, according to the *duplicate* of Mr. Russell's letter, he foresaw in February, 1815, even while writing his learned disserta-

tion against the right which he had been instructed not to surrender, and the only principle by which it could be defended.

At this time, and after all the controversy through which the American principle was destined to pass, and has passed, I, without hesitation, reassert, in the face of my country, the principle, which, in defence of the fishing liberties of this nation, was, at my suggestion, asserted by the American plenipotentiaries at Ghent.

I deem this reassertion of it the more important, because, by the publication at this time of Mr. Russell's letter, that plenipotentiary has not only disclaimed all his share in the first assertion of it, but has brought to bear all the faculties of his mind against it, while the American side of the argument, and the reasons by which it has been supported against arguments coinciding much with those of his letter, but advanced by British reasoners, are not before the public. The principle is yet important to great interests, and to the future welfare of this country.

When first suggested it obtained the unanimous assent of the American mission. In their note of 10th November, 1814, to the British plenipotentiaries, which accompanied their first projet of a treaty, they said, "in answer to the declaration made by the British plenipotentiaries respecting the fisheries, the undersigned, referring to what passed in the conference of the 9th August, can only state, that they are not authorized to bring into discussion any of the rights or liberties which the United States have heretofore enjoyed in relation thereto. From their nature, and from the peculiar character of the treaty of 1783, by which they were recognized, no further stipulation has been deemed necessary by the government of the United States, to entitle them to the full enjoyment of all of them." This paragraph was drawn up, and proposed to the mission by the member with whom Mr. Russell concurred in objecting to the proposal of an article confirmative of the fishing liberties and navigation of the Mississippi, and as a substitute for it. The mission unanimously accepted it: and the fishing liberties being thus secured from *surrender*, no article relating to them or to the Mississippi was inserted in the projet sent to the British mission.

But one of the objects of the negotiation was to settle the boundary between the United States and the British dominions, from the north-west corner of the Lake of the Woods westward. That boundary, by the treaty of 1783, had been stipulated to be, "from the most northwestern point of the Lake of the Woods on a *due west* course to the river Mississippi; and thence, down the middle of the Mississippi, to the thirty-first degree of north latitude;" while, by the eighth article of the same treaty, it had been stipulated, that "the navigation of the river Mississippi, from its source to the ocean, should forever remain free and open to the subjects of Great Britain and the citizens of the United States."

The right of Great Britain and of the United States, at the time of the treaty of 1783, to make this stipulation with regard to the navigation of the Mississippi, might be, and afterwards was, questioned by Spain, then a possessor also of territories upon the same river, and indeed of both its banks, from its mouth to a higher latitude than that thus stipulated as the boundary of the United States. But, as between Great Britain and the United States, there could, at the time of the conclusion of the treaty of 1783, be no possible question

of the right of both to make the stipulation, the boundary line itself being in substance a concession of territory to the river, and down its middle to latitude 31, which Great Britain was undoubtedly competent to make, and the United States to receive. Now, the United States having received the cession and the boundary, with the right to navigate the river with the express condition that the navigation of the river should forever remain free and open to British subjects, and having expressly assented to that condition, without considering it as infringing upon any right of Spain; they could not, consistently with good faith, by acquiring afterwards the right of Spain, allege that this acquisition absolved them from the obligation of the prior engagement with Great Britain. There is, indeed, in Mr. Russell's letter, a hesitating argument to that effect; the odious character of which is but flimsily veiled by its subtlety. The United States had always insisted upon their right of navigating the Mississippi, by force of the article of the treaty of 1783, and had obtained the acknowledgment of that right from Spain herself, many years before they acquired her territorial right by the purchase of Louisiana. With what front, then, could an American negotiator have said, after the latter period, to a British minister:—You have no right to the navigation of the Mississippi; for although, on receiving from you a part of the river, we expressly stipulated that you should forever  
 158 enjoy a right to its navigation, yet that engagement was a fraud upon the rights of Spain; and, although long before we had acquired these rights of Spain, she had acknowledged our right to navigate the river, founded upon this very stipulation of which you now claim the benefit, yet I will now not acknowledge your right founded on the same stipulation. Spain, no party to the compact between you and me, after controverting it as infringing upon her rights, finally acceded to its beneficial application to us, as compatible with those rights. But we, who made the compact with you, having now acquired the adverse rights of Spain, will not allow you the beneficial use of our own compact. We first swindled and then bullied Spain out of her rights, by this eighth article of the treaty of 1783; and now, having acquired ourselves those rights, we plead them for holding our engagement with you for a dead letter.

This, and nothing more or less than this, is the substance of Mr. Russell's argument to show, that *perhaps* the United States were, by the acquisition of Louisiana, absolved from the obligation of the eighth article of the treaty of 1783, even before the war of 1812.

But, says Mr. Russell, the treaty of 1783 was made, under a belief of both parties, that it would leave Great Britain with a portion of territory upon the Mississippi, and *therefore* entitled to claim the right of navigating the river. But the boundary line of the treaty of 1783 was a line from the northwesternmost point of the Lake of the Woods, due west to *the Mississippi*. And after the treaty of 1783, but before the war of 1812, it had been found that a line due west, from the northwest corner of the Lake of the Woods, did not strike the Mississippi. Therefore, continues Mr. Russell, Great Britain could claim no *territorial* right to the navigation of the river; and therefore had no longer any claim to the benefit of the eighth article of the treaty of 1783.

To this it may be replied: First, that the British claim of right to navigate the Mississippi, was not founded solely on the territory

which it was believed they would retain upon that river, by the boundary west from the Lake of the Woods. The eighth article of the treaty of 1783, was a separate and distinct article, stipulating the right of both nations to navigate the river, without any reference to boundary or to territory. But the boundary, the territory, and the right to navigate the river, were all, in that treaty, cessions from Great Britain to the United States. And, had it even been the intention of both parties, that Britain should cede the *whole* of her territories on the Mississippi, it was yet competent to her to reserve the right of navigating the river for her subjects, in common with the people of the United States, and competent for the United States to accept the cession, subject to that reservation. They did so, by the eighth article of the treaty. And in this point of view, the British right of navigating the river, within the American territory, was precisely similar to the American liberty of fishing within the British territorial jurisdiction, reserved by the third article of the same treaty.

But, secondly, the discovery that a line due west, from the north-westernmost corner of the Lake of the Woods, would not strike the Mississippi, had *not* deprived Great Britain of all claim to territory upon that river, at the time of the negotiation at Ghent. The line described in the treaty was, from the northwesternmost point of the Lake of the Woods, "on a *due west* course to the river *Mississippi*." When it was found that the line *due west* did not touch the Mississippi, this boundary was annulled by the fact. It remained an unsettled boundary, to be adjusted by a new agreement. For this adjustment, the moral obligation of the parties was to adopt such a line as should approximate as near as possible to the intentions of both parties in agreeing upon the line for which it was to be substituted. For ascertaining this line, if the United States were entitled to the benefit of the words "on a *due west* course," Britain was equally entitled to the benefit of the words "to the river *Mississippi*." Both the demands stood on the same grounds. Before the war of 1812, three abortive attempts had been made by the parties to adjust this boundary. The first was by the treaty of 1794, when it was already conjectured, but not ascertained, that the line due west from the lake would not intersect the Mississippi. By the fourth article of the treaty of 1794, it was agreed that a joint survey should be made to ascertain the fact; and that, if, on the result of that survey, it should appear, that the west line would not intersect the river, the parties would proceed, "by amicable negotiation, to regulate the boundary line in that quarter, according to justice and mutual convenience, and in conformity to the intent of the treaty of 1783." This survey was never made. The second attempt to adjust the line, was by the convention signed on the 12th of May, 1803, by Mr. King and lord Hawkesbury; the fifth article of which, after reciting the same uncertainty, whether a line drawn due west from the Lake of the Woods would intersect the Mississippi, provided that, instead of the said line, the boundary of the United States, in that quarter, should, and was declared to be, *the shortest line which could be drawn between the northwest point of the Lake of the Woods, and the nearest source of the river Mississippi*. This convention not having been ratified, the third attempt at adjustment had been made in the negotiation of Mr. Monroe and Mr. Pinkney, of 1806 and 1807;

at which an article had been proposed and agreed to, that the line should be from the most northwestern point of the Lake of the Woods, to the 49th parallel of latitude, and from that point, due west, along and with the said parallel, *as far as the respective territories extend in that quarter*. And with that article was coupled another, as follows:—

It is agreed by the United States that his majesty's subjects shall have, at all times, free access from his majesty's aforesaid territories, by land or inland navigation, into the aforesaid territories of the United States, to the river Mississippi, with the goods and effects of his majesty's said subjects, in order to enjoy the benefit of the navigation of that river, as secured to them by the treaty of peace, between his majesty and the United States, and also by the third article of the treaty of amity, commerce, and navigation, of 1794. And it is further agreed that his majesty's subjects shall in like manner, and at all times, have free access to all the waters and rivers falling into the western side of the river Mississippi, and to the navigation of the said river.

This negotiation was suspended, by a change of the British ministry, and was not afterwards resumed. But the following observations upon the two articles, contained in a letter from Mr. Madison to Messrs. Monroe and Pinkney, of 30th July, 1807, show how far Mr. Jefferson, then President of the United States, had authorised those commissioners to accede to them.

Access by land or inland navigation from the British territories, through the territory of the United States to the river Mississippi, is not to be allowed to British subjects, with their goods or effects, unless such articles shall have paid all the duties, and be within all the custom house regulations, applicable to goods and effects of citizens of the United States. An access through the territory of the United States to the waters running into the *western side* of the Mississippi, is under no modification whatever to be stipulated to British subjects.

Such then was the state of things in relation to this interest in question, at the time when the war of 1812 broke out; and at the negotiation of Ghent, the same question of boundary again occurred for adjustment. The right of the British to a line from the Lake of the Woods to the *Mississippi* had never been renounced; and, at the last negotiation between the parties, four years after the United States had acquired Louisiana, and with it all the Spanish rights upon the Mississippi, the British government, in assenting to take the 49th parallel of latitude, as a substitute for the line to the *Mississippi*, had expressly re-stipulated for the free navigation of the river, and free access to it from our territories; to both of which Messrs. Monroe and Pinkney had been explicitly authorised to accede.

Under this state of things, it had never been admitted by the British, nor could we maintain against them by argument, even that the Mississippi river was within our *exclusive* jurisdiction; for so long as they had a right by treaty to a line of boundary to that river, and consequently to territory upon it, they also had jurisdiction upon it; nor, consequently could the instructions of 15th April, 1813, had they even been still in force, have restricted the American commissioners from making or receiving a proposition, for continuing to the British the right of navigating the river, which they had enjoyed, without ever using it, from the time of the treaty of 1783, when the United States had received, by cession from them, the right of enjoying it jointly with them.

Bearing in mind this state of things, we are also to remember, that, in the conference of 19th August, 1814, and in the letter of that date,

from the British to the American plenipotentiaries, (*See Wait's State Papers, vol. IX pp. 334 and 338,*) they had claimed a new northwestern boundary line from *Lake Superior* to the *Mississippi*, and the free navigation of that river. To this the American commissioners had answered on the 24th of August, 1814: The undersigned perceive that the British government "propose, without purpose specifically alleged, to draw the boundary line westward, not from the Lake of the Woods, as it now is, but from *Lake Superior*:" and they objected to it, as demanding a cession of territory.

The British plenipotentiaries, on the 4th September, 1814, replied:

As the necessity for fixing some boundary for the northwestern frontier has been mutually acknowledged, a proposal for a discussion on that subject cannot be considered as a demand for a cession of territory, unless the United States are prepared to assert that there is no limit to their territories in that direction, and that availing themselves of the geographical error upon which that part of the treaty of 1783 was founded, they will acknowledge no boundary whatever, then, unquestionably, any proposition to fix one, be it what it may, must be considered as demanding a large cession of territory from the United States.

Is the American government prepared to assert such an unlimited right, so contrary to the evident intention of the treaty itself? Or, is his majesty's government to understand that the American plenipotentiaries are willing to acknowledge the boundary from the Lake of the Woods to the *Mississippi* (the arrangement made by a convention in 1803, but not ratified,) as that by which their government is ready to abide?

The British plenipotentiaries are instructed to accept favourably such a proposition, or to discuss any other line of boundary which may be submitted for consideration.

I stop here for a moment, to observe how instinctively, if the expression may be allowed, both the parties in this correspondence recur to the treaty of 1783, with a consciousness that it was yet in full force, as an appeal for either in support of its claims. The expression in the above American note, applied to the boundary, "as it now is;" the reference of the British note to the geographical error in the treaty of 1783, and their willingness to discuss the arrangement of 1803, (the shortest line from the Lake of the Woods to the *Mississippi*,) both acknowledge the treaty of 1783 as the basis of all proposition and all argument, and as being yet in force for every thing which should not be otherwise provided for in the new treaty.

In their note of 21st October, 1814, the British commissioners said:

On the subject of the fisheries, the undersigned expressed with so much frankness, at the conference already referred to, the views of their government, that they consider any further observations on that topic as unnecessary at the present time.

On the question of the boundary between the dominions of his majesty and those of the United States, the undersigned are led to expect, from the discussion which this subject has already undergone, that the northwestern boundary, from the Lake of the Woods to the *Mississippi*, (the intended arrangement of 1803,) will be admitted without objection.

Thus stood the parties and the subject, when, on the 10th of November, 1814, the American plenipotentiaries sent the first projet of a treaty to the British commissioners. It contained no article relating either to the fisheries or to the *Mississippi*; but, in the note

160 which accompanied it, to meet the notification twice given on the part of the British government, that they did not intend to grant, without equivalent, the liberty of fishing within the British jurisdiction, the counter-notification, already noticed, was introduced, informing them that the American government did not consider the

fishing liberties as forfeited by the war, and that they would remain in full force without needing any new grant to confirm them. At this stage of the negotiation, therefore, the American plenipotentiaries did actually pursue the first of those three *other* ways of proceeding, which Mr. Russell, in the postscript to the *original* of his letter of 11th February, 1815, says they might have taken, and to which he adds that he would have assented, namely, to contend, for the continuance of the fishing privilege, notwithstanding the war, without saying any thing about the navigation of the Mississippi. It can not be surprising to find Mr. Russell, within three months after these events, writing privately to the Secretary of State, stating this as a course *other* than that which we had pursued, and that he would have assented to it if we had; when it was the very course that we did pursue, and he had assented to it. We did contend, not for the *indestructibility*, as Mr. Russell terms it, of the treaty of 1783, but that, from its peculiar character, it was not abrogated by the mere occurrence of war. We never maintained that the treaty of 1783 was indestructible, or imperishable, but that the rights, liberties, and boundaries, acknowledged by it as belonging to us, were not abrogated by mere war. We never doubted, for example, that we might be compelled to stipulate a new boundary; but that would have been, not as a consequence of mere war, but the effect of conquest, resulting from war. The difference between our principle and that of the British was, that they, considering the rights acknowledged as belonging to us by the treaty, as mere *grants*, held them as annulled by war alone; while we, viewing them as rights existing before the treaty, and only acknowledged by it, could not admit them to be forfeited without our own assent. Britain might have recovered them by conquest; but that could not be consummated without our acquiescence, tacit or expressed. Mr. Russell, who assented to our principle, and asserted it with us, now says he always thought the British principle was the true one. If the American mission, at that trying time, had acted upon it, he never would have prophesied the convention of October, 1818.

The eighth article of the projet of a treaty, sent by the American commissioners on the 10th of November, offered the boundary which had been proposed in 1807, a line north or south to latitude 49, and westward, on that parallel, as far as the territories of the two countries extended; and said nothing about the Mississippi. But when, on the 26th of November, the British plenipotentiaries returned the projet, with their proposed amendments, they accepted the 49th parallel, westward, from the Lake of the Woods, for the boundary, but with the following addition to the article: "And it is further agreed, the subjects of his Britannic majesty shall at all times have access, from his Britannic majesty's territories, by land or inland navigation, into the aforesaid territories of the United States to the river Mississippi, with their goods, effects, and merchandise, and that his Britannic majesty's subjects shall have and enjoy the free navigation of the said river."

It was to meet this demand that, at the conference of 1st December, the American plenipotentiaries proposed to strike out all those words, and to substitute the amendment contained in the protocol of that conference, already communicated to Congress. It was thus that the relation which Mr. Russell, within three months afterwards, so



singularly professes not to perceive between the fishing liberties and the Mississippi navigation, not only naturally arose, but forced itself upon the American plenipotentiaries. They had saved the fishing liberties from *surrender*, as they had been specially instructed to do, by asserting that the treaty of 1783 had not been abrogated *ipso facto* by the war. Two days before receiving this counter project, they had received from Washington a fresh instruction, expressly authorizing them to conclude a treaty on the basis of the *status ante bellum*, including, of course, the fishing liberty on one side, and the navigation of the Mississippi on the other. They could not, therefore, consistently with those instructions, either reject this British demand, or abandon to surrender the fisheries. They offered, therefore, the amendment containing the renewed acknowledgment of both; and they said to the British plenipotentiaries: We have told you that we consider all the rights, secured to us by the treaty of 1783, as still in force. What we demand, if you assent to it, we must yield in return. If, as we say, the treaty of 1783 is yet in force, you have the right of navigating the Mississippi, and we have the fishing rights and liberties unimpaired. If, as you say, the treaty is abrogated, how can you claim the right of navigating the Mississippi? You must admit the one, or not demand the other. We offer you the alternative of a new stipulated admission of both, or a total omission of both. We offer you in application the choice of our principle or of your own.

The British commissioners took the proposal for reference to their government, by whom it was immediately rejected. But, to show how anxious they were to obtain from us the surrender of our fishing liberties, and how cheaply they valued the right of navigating the Mississippi, as one of the last expedients of negotiation, they offered us an article agreeing that, after the peace, the parties would further negotiate "respecting the terms, conditions, and regulations, under which the inhabitants of the United States" should again enjoy the fishing liberties, "*in consideration of a fair equivalent*, to be agreed upon between his majesty and the said United States, and granted by the said United States for such liberty aforesaid;" and a reciprocal stipulation with regard to the British right of navigating the Mississippi. As the parties after the peace would have been just as competent further to negotiate on these points, if so disposed, without this article as with it, its only effect would have been a mutual *surrender*, on the American side, of the fishing liberties, and on the British side, of the right to navigate the Mississippi; with this difference, that we should have surrendered, in direct violation of our instructions, a real, existing, practical liberty, which, even in the war of our Independence, had been deemed of the highest importance, and at its close had been, with infinite difficulty, secured; a liberty, of which that portion of the Union, whom it immediately concerns, had been, from the time of the treaty of 1783, in the constant, real, and useful possession; while the British would have surrendered absolutely nothing—a right which, by inference from their own principle, was abrogated by the war; a right which, under the treaty of 1783, they had enjoyed for thirty years, without ever using it, and which, in all human probability, never would have been of more beneficial use to the British nation than would be to the people of the United States the right of navigating the Bridgewater canal, or the Danube.

There was certainly an inconsistency on the part of the British government, in claiming a right to navigate the Mississippi, while asserting that the treaty of 1783 was abrogated by the war: and when pressed by us to say on what principle they claimed it without offering for it an equivalent, they said the equivalent was, their acceptance of the 49th parallel of latitude for the northwestern boundary, instead of the line, to which they were entitled by the treaty of 1783 *to the Mississippi*. As they gave up the line to the river, they said they had a right to reserve its navigation, and access to it for that purpose. They had said the same thing to Messrs. Monroe and Pinkney in 1807; and the principle had been assented to by them, with the subsequent sanction of President Jefferson. Still the whole argument leaned upon the continuing validity of the treaty of 1783; for the boundary line, as well as the Mississippi navigation, was null and void, if that treaty was abrogated. We replied to them, that, although we were willing to agree to the 49th parallel of latitude for the boundary, and thought it of mutual interest that the line should be fixed, we were yet not tenacious of it; we could not agree to their article of mutual surrender, with a pledge of future negotiation; but we would consent to omit the boundary article itself, and leave the whole subject for future adjustment. And to this they finally agreed.

The advantage of this to us was, that we came out of the war, without having *surrendered* the fishing liberties, as they had been enjoyed before, and stipulated at the treaty of 1783. We were still free to maintain, and we did, after the conclusion of the peace, effectively maintain, the existence of the right, notwithstanding the intervening war. The British government still insisted that the treaty of 1783 was abrogated by the war; but when called upon to show, why then they treated the United States as an independent nation, and why in the treaty of Ghent they had agreed to four several commissions to ascertain the boundaries, "according to the true intent and meaning of that same treaty of 1783," they finally answered, that they considered our Independence, and the boundaries, as existing facts, like those of other nations, without reference to their origin. This left nothing but a dispute about words; for we applied the same principle to the fishing liberties of the third article, which they conceded with regard to the acknowledgment of Independence and to the boundaries. They considered the whole treaty of 1783 as a British grant. We considered it as a British acknowledgement. They never drew the nice distinction, attempted by Mr. Russell, between a perishable and imperishable part of the treaty, or admitted that it consisted of rights which they could not, and of privileges which they could resume without our consent. By their principle, they might have resumed the whole: and when they notified to us at Ghent, that they did not intend to *grant* us again the fishing liberties within their exclusive jurisdiction, but that they meant to leave us the right of fishing in the open sea, they gave us distinctly enough to understand that they were treating us with magnanimity, in not resuming the whole. There was in truth no difference in the principle. And Mr. Russell, in consulting his Vattel, to find that fishing rights were *jura meræ facultatis*, and therefore imprescriptible, ought to have seen what that writer very explicitly says, not that they were rights which could not be *acquired* by long usage, but rights which could not be

lost by non user. He ought also to have seen, what Vattel no less clearly lays down, that although a nation may appropriate to itself a fishery upon its own coasts and within its own jurisdiction, yet, "if it has once acknowledged the common right of other nations to come and fish there, it can no longer exclude them from it; it has left that fishery in its primitive freedom, at least with respect to those who have been in possession of it." And he cites the herring fishery on the coast of England, as being common to them with other nations, because they had not appropriated it to themselves, *from the beginning*.

In perusing the letter of Mr. Russell, whether original or duplicate, I cannot but reflect with gratitude to Providence upon the slender thread by which the rights of this nation to the fisheries were in fact suspended at the negotiation of Ghent. Positive and precise as our instructions were, not to *surrender* them, if Mr. Russell had disclosed at Ghent the opinions avowed in either version of his letter, if he had so broadly asserted and so pertinaciously maintained his conviction of the utter worthlessness of the fisheries, in comparison with the exclusion of the British from a mere phantom of right to navigate the Mississippi, which they had always enjoyed without use; without benefit to themselves or injury to us; if he had so learnedly dissented to prove that the treaty of 1783 was totally and absolutely abrogated by the war; if he had so thoroughly inverted the real state of the question, and painted it in such glowing colours as a sacrifice of deep, real interests of the West to a shallow, imaginary interest of the East; if, with that perseverance which is the test of sincerity, he had refused to sign the proposal determined upon by the majority of his colleagues, and given them notice that he should transmit to his government the vindication of himself and his motives for differing from them; and, above all, if another mind could have been found in the mission, capable of concurring with him in those views, it would at least have required of the majority an inflexibility of fortitude, beyond that of any trial by which they were visited, to have persevered in their proposal. Had they concurred with him in his opinion of the total abrogation of the treaty of 1783, by the mere fact of the war, the fisheries in the Gulf of St. Lawrence, on the coast of Labrador, and to an indefinite extent from the Island of Newfoundland, were lost to the United States forever, or at least till the indignant energy of the nation should have recovered, by conquest, the rights thus surrendered to usurpation. In notifying to us that the British government intended not to renew the grant of the fisheries within British jurisdiction, they had not said what extent they meant to give to these terms. They had said they did not mean to extend it to the right of the fisheries, generally, or *in the open seas* enjoyed by all other nations. (*See Letter of the American Commissioners to the Secretary of State of 12th August, 1814. Wait's State Papers, vol. 9, p. 321.*) But there was not wanting historical exposition of what Great Britain understood by her exclusive jurisdiction as applied to these fisheries. In the 12th article of the treaty of Utrecht, by which Nova Scotia or Acadia had been ceded by France to Great Britain, the cession had been made "in such ample manner and form, that the subjects of the most Christian King shall  
162 hereafter be excluded from all kind of fishing in the said seas,

bays, and other places on the coasts of Nova Scotia; that is to say on those which lie towards the east, within thirty leagues, beginning from the island commonly called Sable, inclusively, and thence along towards the southwest."

By the thirteenth article of the same treaty, French subjects were excluded from fishing on any other part of the coast of the Island of Newfoundland, then from Cape Bonavista northward, and then westward to Point Riche. By the fifteenth article of the treaty of Utrecht, between Great Britain and Spain, certain rights of fishing *at* the Island of Newfoundland, had been reserved to the Guipuscoans, and other subjects of Spain; but in the eighteenth article of the treaty of peace between Great Britain and Spain, of 1763, his Catholic majesty had desisted, "as well for himself as for his successors, from all pretension which he might have formed in favour of the Guipuscoans and other his subjects, to the right of fishing in the neighbourhood of the Island of Newfoundland." In these several cases, it is apparent that Great Britain had asserted and maintained an exclusive and proprietary jurisdiction over the whole fishing grounds of the Grand Bank, as well as on the coast of North America, and in the Gulf of St. Lawrence. Nor are we without subsequent indications of what she would have considered as her exclusive jurisdiction, if a majority of the American commission at Ghent had been as ready as Mr. Russell declares himself to have been, to subscribe to her doctrine, that all our fishing liberties had lost, by the war, every vestige of right. For, in the summer of 1815, the year after the conclusion of the peace, her armed vessels on the American coast warned all American fishing vessels not to approach within sixty miles of the shores.

It was this incident which led to the negotiations which terminated in the convention of 20th October, 1818. In that instrument the United States have *renounced forever*, that part of the fishing liberties which they had enjoyed or claimed in certain parts of the exclusive jurisdiction of the British provinces, and within *three marine miles* of the shores. This privilege, without being of much use to our fishermen, had been found very inconvenient to the British: and, in return, we have acquired an enlarged liberty, both of fishing and drying fish, within the other parts of the British jurisdiction, *forever*. The first article of this convention affords a signal testimonial of the correctness of the principle assumed by the American plenipotentiaries at Ghent; for, by accepting the express renunciation of the United States, of a small portion of the privilege in question, and by confirming and enlarging all the remainder of the privilege *forever*, the British government have implicitly acknowledged that the liberties of the third article of the treaty of 1783 had *not* been abrogated by the war, and have given the final stroke to the opposite doctrine of Mr. Russell. That words of perpetuity in a treaty cannot give that character to the engagements it contains, is not indeed a new discovery in diplomatic history; but that truism has as little concern with this question, as the annulment of our treaty of 1778 with France, so aptly applied to it in his letter. It is not, therefore, the word *forever*, in this convention, which will secure to our fishermen, for all time the liberties stipulated and recognised in it; but it was introduced by our negotiators, and admitted by those of Great Britain as a warning that we shall never consider the liberties secured to us by it, as abrogated by mere war. They may, if they please, in

case of a war, consider the convention as abrogated. but the privileges as existing, without reference to their origin. But they and we, I trust; are forever admonished against the stratagem of demanding a surrender, in the form of notifying a forfeiture. They and we are aware, forever, that nothing but *our own renunciation* can deprive us of the right.

The second article of this same convention affords a demonstration equally decisive, how utterly insignificant and worthless, in the estimation of the British government, was this direfully dreaded navigation of the Mississippi. The article gives us the 49th parallel of latitude for the boundary, and neither the navigation of the river, nor access to it, was even asked in return.

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No. 30.—1822, June 27: *Extract from Mr. Russell's Reply to Mr. J. Q. Adams.*

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The principle, that the treaty of 1783 was not, on account of its peculiar character, abrogated by the war, Mr. Adams not only *reasserts*, but alleges to have obtained, when first suggested by him at Ghent, the *unanimous* assent of the American mission. The proof of this allegation appears to be inferred from the signature, by *all* that mission, of a note, to the British ministers, of the 10th of November, in which that principle was partially adopted. It has already been seen, even from the avowal of Mr. Adams himself, that the paragraph, offered by Mr. Clay, admitting that doctrine, was a *substitute* to a proposition which the minority had opposed. To adopt, partially, *in the spirit of compromise*, a doctrine, as a pretext to preserve the fishing privilege and to get rid of a proposition confirmative of the British right to the navigation of the Mississippi, cannot fairly be considered as an unanimous acknowledgment by the American mission, of the orthodoxy of that doctrine. The constitution of the United States was, avowedly, the result of compromise, and thence some, at least of those who signed that instrument, must necessarily have subscribed to provisions which they did not desire, and to opinions which they did not approve. The inference of Mr. Adams is, therefore, not correct. I do not recollect, indeed, that any member of the mission, excepting Mr. Adams himself, appeared to be a very zealous believer in that doctrine. Even Mr. Gallatin, in his separate letter of the 25th of December, 1814, speaks only of this doctrine as one that had been *assumed*. Sure it is that the minority consented to admit that doctrine as an expedient only to prevent

163 the proposition, already decided on by the majority, from constituting an article of our project. So far and no farther were the minority willing to go in adopting that doctrine, but whenever it was proposed to sanction the British right to navigate the Mississippi, they uniformly resisted it.

Mr. Adams also asserts that the proposal confirming the British right to the navigation of the Mississippi and ours to the fishing privilege, was made not by a *majority*, but by the whole of the American mission, and refers to the protocol of the conference of the 1st of December, at which that proposal was, at length, made, and to

our note of the 14th of that month, signed by all the American mission, which said that "to such an article, *which they viewed as merely declaratory*, the undersigned had no objection, and have offered to accede."

If he had referred, at the same time, to the despatch of the 25th December, 1814, he would there have seen that, in fact, a *majority* only, and not the whole of the mission, decided to make that proposal. The words of the despatch, in reference to that proposal, are, "to place both points beyond all future controversy, a *majority of us* determined to offer an article confirming both rights." Mr. Adams signed that despatch, and thus, at that time, attested a fact which he now positively denies.

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No. 31.—1822: *Extract from Mr. J. Q. Adams' Rejoinder to Mr. Russell.*

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Mr. Russell has taken infinite pains to fasten exclusively upon me, the imputation of being the *only* asserter of this doctrine, that from the peculiar character of the treaty of 1783, and from the nature of the fishing rights and liberties, they had none of them been abrogated by the war, and needed no new stipulation to preserve them. And it is this doctrine, which in the calmness of his urbanity he styles the *dream* of a visionary.

I certainly never should have claimed the credit of having been alone in the assertion of this principle. I should have been willing that *all* my colleagues, who united with me in asserting it in the note of 10th November, 1814, at Ghent, signed by them all, should have gone through life with the credit, and have left to posterity the reputation, of having had each an equal share in this assertion. But Mr. Russell has effectually disclaimed all his portion of it, and its consequences. He has represented it as, on the part of the minority, a *PRETEXT to preserve the fishing privilege*, and to get rid of a proposition confirmative of the British right to the navigation of the Mississippi. He says he does not recollect that any member of the mission, except myself, appeared to be a very zealous believer in that doctrine. I thank Mr. Russell for that concession. If there was moral virtue or has been successful result in the assertion of that principle to preserve the fishing liberties, I ask no more than an equal share in the esteem of my country, for having asserted it, with those of my colleagues who are yet willing to bear the imputation, not as a *pretext*, but with sincerity of heart, and as very zealous believers in it. But were every other living member of the mission to say, and were the spirit of Bayard from the tomb to join with them and declare, that they *assumed* this principle only in the spirit of compromise, and as a *pretext*, but that they considered it only as the dream of a visionary, I would answer—the dream of the visionary was an honest dream. He believed what he affirmed and subscribed. And, I might confidently add, it has saved your fisheries. Nor should I need other proof, than the negotiations with Great Britain since the peace, and the convention of 1818.

I would further observe, that if the principle was assumed by the minority in the spirit of compromise, that spirit was much more strongly manifested by the majority, and particularly by me, in accepting this substitute, instead of the article proposed by Mr. Gallatin. I shall assuredly never deny, that from the time when the British plenipotentiaries notified to us, that their government did not intend to grant the fishing liberties without an equivalent, I felt an inexpressible solicitude for their preservation. I have already remarked that this notification was made in terms so indefinite, that its object apparently was to exclude us from the *whole* of the Newfoundland, Gulf of St. Lawrence, and Labrador fisheries. Mr. Russell has not ventured to contest this position; nor could he have contested it with success. The notification, as entered upon the protocol of conference of 8th August, 1814, made up jointly by both parties, was as follows:

The British commissioners requested information, whether the American commissioners were instructed to enter into negotiation on the above points? But before they desired any answer, they felt it right to communicate the *intentions* of their government *as to the North American fisheries* viz. That the British government did not intend to *grant* to the United States, gratuitously, the privileges formerly *granted* by treaty to them, of *fishing within the limits of the British sovereignty*, and of using the shores of the British territories for purposes connected with the fisheries. (*Wait's State Papers, vol. 9, p. 330.*)

The remark upon it, made by the American mission, in their letter to the Secretary of State of 12th August, 1814, was this:

The extent of what was considered by them as waters peculiarly British, was not stated. From the manner in which they brought this subject into  
164 view, they seemed to wish us to understand, that they were not anxious that it should be discussed, and that they only intended to give us notice, that these privileges *had ceased to exist*, and would not be again granted without an equivalent, nor unless we thought proper to provide expressly in the treaty of peace for their renewal. (*Ibid. p. 321.*)

And what were the limits of British sovereignty, as to the North American fisheries? Ask the Abbe Raynal.

According to natural right, the fishery upon the great bank *ought* to have been common to all mankind; notwithstanding which, the two powers that had formed colonies in North America, have made very little difficulty of *appropriating it to themselves*. Spain, who alone could have any claim to it, and who, from the number of her monks, might have pleaded the necessity of asserting it, entirely gave up the matter at the last peace, since which time the English and French are the only nations that frequent these latitudes. (*Raynal's History, book 17.*)

Ask the commentator on the marine ordinance of Louis XIV, Valin. After assigning *soundings*, as the extent of sovereign jurisdiction, upon the sea, in regard to fisheries, he says:

As to the right of fishing upon the Bank of Newfoundland, as that island, which is, as it were, the seat of this fishery, then belonged to France, it was so held by the French, that other nations could naturally fish there only by virtue of the treaties. This has since changed, by means of the cession of the Island of Newfoundland, made to the English, by the treaty of Utrecht; but Louis XIV, at the time of that cession, made an express reservation of the right of fishing upon the Bank of Newfoundland, in favour of the French, as before. (*Valin, vol. 2, p. 693.*)

And Mr. Jefferson, in his Report on the Fisheries, of 1st February, 1791, had said:

Spain had formerly relinquished her pretensions to a participation in these fisheries, at the close of the preceding war: and at the end of this, the adjacent

continent and islands being divided between the United States, the English, and French, (for the last retained two small islands merely for this object,) the right of fishing was *appropriated* to them also.

I did not entertain a doubt that the object of the British government then was, to exclude us from the whole of this fishery, unless upon our own coast; nor do I now, that if we had then acquiesced in their principle, they would have excluded us from it after the peace entirely.

I did, therefore, feel a deep and earnest solicitude for them. Nor was that solicitude allayed by the discovery that there was in the heart of the mission itself, a disposition and an influence operating against them almost as inflexibly, and, in my estimation, far more dangerously, than the British adversary himself.

There were but two possible ways, after the British notification, of preserving these rights and liberties from total extinction. The one was, by obtaining a new recognition of them in the treaty, which could not be done without offering an equivalent; and the other was, by asserting that they had not been forfeited by the war, and would remain in full vigour, although the treaty should be concluded without such an article.

In preparing the draught of the treaty, Mr. Gallatin had drawn an article, stipulating anew the recognition, and offering, as the equivalent, the recognition of the British right to navigate the Mississippi, contained in the same treaty of 1783, and of which the British plenipotentiaries had demanded the renewal.

Mr. Gallatin was a citizen of the Western Country, and as incapable as *any* other member of the mission, of sacrificing an essential interest of one quarter of the Union, to a minor interest of another. I was, therefore, profoundly mortified to see his article objected to on a principle of *conflicting sectional interest*, and still more so, to hear Mr. Russell observe, after his opinion had been disclosed by his vote, that the fisheries were an interest of a *dissaffected* part of the country. I was as far as Mr. Russell from approving the policy or the measures then predominating in New-England: but to cast away and surrender to the enemy the birthright of my country, an interest as lasting as the ocean and the shores of my native land, for a merely momentary aberration, rather of its legislature than its people, was so far from meeting my concurrence, that it sickened my soul to hear it hinted from one of her own sons.

Considered merely and exclusively was reference to *sectional interests*, Mr. Gallatin's proposed article was fair and just. It proposed that both interests should be placed on the same footing on which they had stood before the war. The first and paramount duty of the government was to bring the nation out of the war, with all its great interests *preserved*. It was not to *gain* an advantage for one section, by the *loss* of an advantage to another. The principle of Mr. Gallatin's article was, that neither section should gain or lose by the issue of the war. The principle of the objection to it was, that the West should *gain*, by the *sacrifice* of the interest of the East: and the main motive assigned for it was that the East was a *dissaffected* part of the country.

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The objection to Mr. Gallatin's proposed article, therefore, was an objection to securing to New England the continued enjoyment of



the fisheries, because the price of its purchase would be to permit British subjects to travel a highway in the Western Country. It was impossible to make of it any thing more; and deeply concerned as I felt for the fate of the fisheries, I greatly regretted that the objection was made to it. Not that I expected it would be accepted by the British plenipotentiaries. I too well knew the value which *they* set upon the fisheries, and the worthlessness at which they *must* estimate the naked right *to them* of navigating the Mississippi, to consider it as probable that they would accept the proposal. But our duty as ministers of the Union, charged with the defence of all its rights and liberties staked upon the conflict, and specially instructed *not* 165 *to surrender* the fisheries, was to use *every* fair exertion to preserve them. And Mr. Gallatin's proposal was one of the only two possible modes of effecting it.

Nevertheless, as a strong and earnest opposition to proposing the article was made, avowedly founded upon a supposed interest *merely* sectional; after a discussion continued through six successive days, at the last of which only I had taken part, and before the vote was taken, I did, on the 4th of November, declare myself prepared either to propose Mr. Gallatin's article, or to take the ground that all the rights and liberties in the fisheries were *recognized* as a part of our national independence, that they could not be abrogated by the war, and needed no stipulation for their renewal—to assert this principle in the note to be sent to the British plenipotentiaries, with the project of the treaty, and to omit the article altogether.

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[Referring to Mr. Russell's dissenting letter to the Secretary of State, Mr. Adams said:]

This letter, Mr. Russell writes, not in cypher; commits it to the ocean, before hostilities have ceased; and exposes it in various ways to be intercepted by the enemy. It reaches, however, its destination, after the ratification of the peace, and just about the time when British cruisers, stationed on the fishing grounds, warn all American fishing vessels not to approach within *sixty miles* of the shores. Such is the practical exposition given by the British government of *their* meaning in the indefinite notification that they intended to exclude us from fishing *within the limits of British sovereignty*: and that exposition was supported by all the historical public law applicable to the case, and by the most eminent writers upon the law of nations. The complaints of the American fishermen, thus interrupted in their honest industry, and interdicted from the exercise of it, and the argument of Mr. Russell to *demonstrate* the abrogation of the treaty of 1783 by war, and the consequent discontinuance of the fishing *privilege*, (as he terms it) must have been received about the same time, by the Secretary of State. If the argument had been as successful, as it had been laboriously wrought, what a happy answer it would have supplied for Mr. Monroe to the complaints of the fishermen! What a theme for the instructions to be given to the American minister at London, upon this emergency!

But the President of the United States and the Secretary of State of that day, were no converts to the doctrine of Mr. Russell; nor believers in the worthlessness of the fishing liberties. The minister

at London was instructed to remonstrate against the interruption of the fishermen, and to maintain the rights of the nation. A correspondence with the British government ensued, in which the question as to the abrogation of the treaty of 1783 was thoroughly discussed. The orders to the British cruisers were partly disavowed, and partly countermanded. The negotiation was continued until that of the convention of 1818 commenced, and merged in it. The British government never formally renounced their and Mr. Russell's doctrine, that the war of 1812 had abrogated the treaty of 1783. As little did the government of the United States renounce the doctrine, that all their rights and liberties, recognized by the treaty of 1783, were in full force as if the war of 1812 had never occurred. The conflict of opinion was adjusted by a new article, as little liable to be abrogated by a future war, as the treaty of Independence. By this article, we have expressly renounced a small portion of the liberties within the exclusive and limited territorial jurisdiction of part of the British provinces, and have received in equivalent an enlargement of those liberties on the coast and shores of Newfoundland. The substance of the contest has been conceded to us; and each party has adhered to its doctrine.

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[Pursuing the general argument Mr. Adams said:]

The nature of the rights and liberties, consisted in the free participation in a *fishery*. That fishery covering the bottom of the banks which surround the Island of Newfoundland, the coasts of New-England, Nova Scotia, the Gulf of St. Lawrence, and Labrador, furnishes the richest treasure and the most beneficent tribute that ocean pays to earth on this terraqueous globe—By the pleasure of the Creator of earth and seas, it had been constituted in its physical nature *one* fishery, extending in the open seas around that island, to little less than five degrees of latitude from the coast, spreading along the whole northern coast of this continent, and insinuating itself into all the bays, creeks, and harbours to the very borders of the shores. For the full enjoyment of an equal share in this fishery, it was necessary to have a nearly general access to every part of it. The habits of the game which it pursues being so far migratory that they were found at different periods most abundant in different places, sometimes populating the banks and at others swarming close upon the shores. The latter portion of the fishery had, however, always been considered as the most valuable, inasmuch as it afforded the means of drying and curing the fish immediately after they were caught, which could not be effected upon the banks.

By the law of nature this fishery belonged to the inhabitants of the regions in the neighbourhood of which it was situated. By the conventional law Europe, it belonged to the European nations which had formed settlements in those regions. France, as the first principal settler in them, had long claimed the *exclusive* right to it. Great Britain, moved in no small degree by the value of the fishery itself, had made the conquest of all those regions upon France, and had limited by treaty, within a narrow compass, the right of France to any share in the fishery. Spain, upon some claim of prior discovery had for some time enjoyed a share of the fishery on the banks;

but at the last treaty of peace, prior to the American revolution, had expressly renounced it.

At the commencement of the American revolution, therefore, this fishery belonged exclusively to the *British nation*, subject to a certain limited participation in it reserved by treaty stipulations to France.

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166 By the third article of the preliminaries of November, 1782, and also by the corresponding article of the definitive treaty of 1783, the whole of the fishing rights and liberties were secured, and *recognized*, as rights and liberties, pre-existing, and not as temporary grants—the variation of the terms in the articles, securing the *right* to fish on the banks of Newfoundland, in the Gulf of St. Lawrence, and at all other places in the sea, and the *liberty* to fish on the coasts of Newfoundland and the other British provinces arose only from the circumstance, that by the same act which recognized these liberties, (the treaty of peace,) the territorial jurisdiction of those provinces, which had until then been the same with that of the other British colonies, became to the United States a *foreign* jurisdiction. The continuance of the fishing liberty was the great object of the article; and the language of the article was accommodated to the severance of the jurisdictions, which was consummated by the same instrument. It was co-instantaneous with the severance of the jurisdiction itself; and was no more a grant from Great Britain, than the *right* acknowledged in the other part of the article; or than the Independence of the United States, acknowledged in the first article. It was a continuance of possessions enjoyed before; and at the same moment, and by the same act, under which the United States acknowledged those coasts and shores as being under a *foreign* jurisdiction, Great Britain recognized the liberty of the people of the United States to use them for purposes connected with the fisheries.

This also was the *peculiar* character of the treaty of 1783, in which our title was recognised to the rights and liberties in the fisheries. They had all the qualities mentioned by the authors on the laws of nations, as appropriate to permanent and irrevocable acknowledgments:

Who can doubt (says Vattel) that the pearl fishery of Bahrem and Ceylon, may not lawfully be enjoyed as property? And though a fishery for food appears more inexhaustible, if a nation has a fishery on its coasts that is particularly advantageous, and of which it may become master, shall it not be permitted to appropriate this natural advantage to itself, as a dependence on the country it possesses; and if there are a sufficient number of fish to furnish the neighbouring nations, of reserving to itself the great advantage it may receive from them by commerce? But if, so far from taking possession of it, *it has once acknowledged* the common right of other nations to come and fish there, *it can no longer* exclude them from it; it has left that fishery in its primitive freedom, at least with respect to *those who have been in possession of it*. The English not having taken the advantage *from the beginning*, of the herring fishery on their coast, it is become common to them with other nations. (*Vattel*, b. 1, ch. 23, § 287.)

In the third article of the treaty of 1783, the liberties of the people of the United States in the fisheries within the British North American colonial jurisdiction were, in the most rigorous sense of the words acknowledged *from the beginning*—for it was by the very same act, which constituted it, as to the United States, a *foreign* jurisdiction.

That this was the understanding of the article, by the British government as well as by the American negotiators, is apparent to demonstration, by the debates in Parliament upon the preliminary articles. It was made in both Houses one of the great objections to the treaty. In the House of Commons, lord North, the man who as minister in 1775, had brought in and carried through the act for depriving us of the fishery, but who had now become a leader of the opposition, said:

By the third article, we have, in our spirit of reciprocity, given the Americans an unlimited right to take fish of every kind on the Great Bank, and on all the other Banks of Newfoundland. But this was not sufficient. We have also given them the right of fishing in the Gulf of St. Lawrence, and at all other places in the sea where they have heretofore enjoyed, *through us*, the privilege of fishing. They have likewise the power of even partaking of the fishery which we still retain. We have not been content with resigning what we possessed, but even share what we have left. The United States have liberty to fish on that part of the coast of Newfoundland which British fishermen shall use. All the reserve is, that they are not to dry or cure the same on the island. By this grant they are at liberty to take our property, for which we have so long kept possession of the island. This is certainly a striking instance of that liberal equity which we find is the basis of the provisional treaty! But where shall I find an instance of that reciprocity which is also set forth in the preamble? We have given the Americans the unlimited privilege of fishing on all the coast, bays, and creeks, of our American dominions. But where have they, under this principle of reciprocity, given us the privilege of fishing on any of their coasts, bays, or creeks? I could wish such an article could be found, were it only to give a colour to this boasted reciprocity. The advantage we should derive from such an article, cannot be a consideration; for every real and positive advantage to Great Britain seems to have been entirely foreign to the intent and meaning of this peace, in every particular; otherwise I should have thought it would have been the care of administration not to have given without the least equivalent, that permission which they could never demand as British subjects. I am at a loss to consider how we could grant, or they could claim it, as a right, when they assumed an independency which has separated them from our sovereignty.

In this speech, the whole article is considered as an improvident concession of British property; nor is there suggested the slightest distinction in the nature of the grant between the right of fishing on the banks, and the liberty of the fishery on the coasts.

Still more explicit are the words of lord Loughborough, in the House of Peers: "The fishery," says he, "*on the shores retained by Britain*, is in the next article, not ceded, but *recognised* as a right inherent in the Americans, which though no longer British subjects, they are to *continue to enjoy unmolested*, no right on the other hand being reserved to British subjects to approach their shores, for the purpose of fishing, in this reciprocal treaty."

In the replies of the ministerial members to these objections, 167 there is not a word attempting to contradict them, or hinting at a distinction in the tenure of the title between the right and the liberty.

Such was the nature of the rights and liberties of the people of the United States in the fisheries, and such the peculiar character of the treaty of 1783, by which they had been recognised. The principle asserted by the American plenipotentiaries at Ghent; disavowed and combated by Mr. Russell, in his letter of 11th February, 1815, and now treated by him as the dream of a visionary, was that these rights and liberties, thus recognised could not be forfeited by a war, and that no new stipulation was necessary to secure them. The whole

fishery, as well without as within the special territorial jurisdiction, had been the common property of the British empire: so had been the whole territory to which it had been incidental. By the treaty of separation, the territory was divided, and two separate sovereign jurisdictions arose. The fishery bordered upon both. The jurisdictions were marked out by the boundary line agreed upon by the second article of the treaty. The fishery was disposed of in the third article. As common property, it was still to be held in common. As a possession, it was to be held by the people of the United States, as it had been held before. It was not like the lands partitioned out by the same treaty, a corporeal possession, but in the technical language of the English law, an *incorporeal hereditament*, and in that of the civil law, a *right of mere faculty*, consisting in the power and liberty of exercising a trade, the places in which it is exercised being occupied only for the purposes of the trade. Now the right or liberty to enjoy this possession, or to exercise this trade, could no more be affected or impaired by a declaration of war, than the right to the territory of the nation. The interruption to the exercise of it during the war, could no more affect the right or liberty, than the occupation by the enemy of territory could affect the right to that. The right to territory could be lost only by abandonment or renunciation in the treaty of peace; by agreement to a new boundary line, or by acquiescence in the occupation of the territory by the enemy. The fishery liberties could be lost, only by express renunciation of them in the treaty, or by acquiescence in the principle that they were forfeited, which would have been a tacit renunciation.

I hope it will not be deemed an assertion of infallibility, when I say, that I present this argument to my country, both as to the nature of our rights and liberties in the fisheries, and as to the peculiar character of the treaty by which they were recognised, with a perfect conviction that *it cannot be answered*. But if I am mistaken in that, sure I am, that it never has been answered, either by the British Government or by Mr. Russell.

If admitted, it leaves the question, whether the treaty of 1783 was or was not abrogated by the late war? a mere question of useless speculation, or of *national pride*. That *British* statesman and jurists should manifest some impatience, and seize upon any pretext to cause *that* treaty to disappear from the archives of their national muniments, is not at all surprising. That an *American* statesman should partake of the same anxiety, is not so natural, though it may be traced to the same system of public law, by which the commerce and fisheries of the colonies, before the Revolution, were supposed to be held at the mere pleasure of the British crown. It is not necessary to deny that the treaty of 1783 was, as a national compact, abrogated by the late war, so long as with the assertion of its being so abrogated, is not coupled the assertion that any one right or liberty, acknowledged in it as belonging to the people of the United States, was abrogated with it. But when the British government or Mr. Russell assert that all the other rights and liberties acknowledged and secured to the United States by that treaty, survived its abrogation, except one portion of the property in the fisheries, stipulated in one half of one article, I say there is nothing either in the nature of the liberty contested, or in the article by which it is recognised, that will warrant their distinction; that the whole treaty was one com-

fact of irrevocable acknowledgments, consummated by the ratification; and that the third article in particular, adjusted the rights and liberties of the parties in and to one common property, of which neither party could ever afterwards divest the other without his consent.

When, therefore, the British government and Mr. Russell assert, that war abrogates all treaties, and every article of every treaty, they have yet proved nothing for their argument; they must proceed to affirm, that with the abrogation of the treaty by war, all the rights and liberties *recognized* in the treaty as belonging to either party, are likewise abrogated. And herein lies the fallacy of their argument.

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If, then, none of the rights, liberties, or possessions, recognized by the first and second articles of the treaty of 1783, as belonging to the United States, were abrogated by the war of 1812, by what right, and upon what principle, could Mr. Russell consider the fishing liberty, *recognized* as belonging to them by the *third* article, to be *entirely at an end, without a new stipulation for its revival*. The whole of the third article, concerning the fisheries, was as much a *recognition* of pre-existing rights, liberties, and possessions, as the first and second articles.

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[After referring to the clauses of the treaty relating to independence and boundaries, Mr. Adams continued as follows:]

But the doctrine itself, that war dissolves all treaties, and every article of every treaty, without exception, is not correct. It has been very solemnly disclaimed by the United States, in the following terms of the 24th article of their first treaty with Prussia:

And it is declared, that neither the pretence that war dissolves all treaties, nor any other, whatever, shall be considered as annulling or suspending this and the next preceding article; but on the contrary, that the state of war, is precisely that for which they are provided; and during which they are to be as sacredly observed as the most acknowledged articles in the law of nature or nations.

Of this treaty, Dr. Franklin and Mr. Jefferson were two of the negotiators on the part of the United States, and Frederick the second was the sovereign with whom it was negotiated. It not  
168 only contradicts the doctrine that war dissolves all treaties, without exception, but fixes a stigma upon it as a *pretence* usually resorted to for the purpose of disguising or of palliating a violation of good faith.

The *pretence* that war dissolves all treaties is itself a remnant of that doctrine of the barbarous ages, that faith is not to be kept with enemies, and that no compact made in war is obligatory. The modern writers upon the laws of nations, have exploded this opinion, and expressly laid it down, that all articles of a treaty made during war, or having in contemplation the state of war, as that in which they are to take effect, remain in full force, and are not abrogated by war. This, therefore, constitutes a large class of articles of treaties which are not abrogated by war. Another class of articles, equally privileged from such abrogation, are all *executed stipulations*—Cessions of territory, demarcations of boundary, acknowledgments of pre-existing rights and liberties, belong to this class—and in it are included the first, second, and third articles of the treaty of 1783.

All articles which have been executed, may indeed be said to be abrogated by the execution itself. The transaction between the parties is consummated. In the case of a cession of territory, when the possession of it has been delivered, the article of the treaty is no longer a compact between the parties, nor can a subsequent war between them operate in any manner upon it.

So of all articles the purport of which is the *acknowledgment* by one party of a pre-existing right belonging to another. The engagement of the acknowledging party is consummated by the ratification of the treaty. It is no longer an executory contract; but a perfect right united with a vested possession, is thenceforth in one party, and the acknowledgment of the other is in its own nature irrevocable. As a bargain, the article is extinct; but the right of the party in whose favour it was made, is complete, and cannot be affected by a subsequent war.

A *grant* of a facultative right, or incorporeal hereditament, and specifically of a right of fishery, from one sovereign to another, is an article of the same description. It is analogous to a cession of territory, and is in fact a partial and qualified cession. The *right* is consummated by the ratification of the treaty. The possession is vested by the exercise of the faculty. Mere war between the parties, can neither impair the right of one party nor effect the revocation of the grant by the other.

So that whether the third article of the treaty of 1783 be considered as an acknowledgment of pre-existing *liberties*, or as a *grant* of them, to be exercised within British jurisdiction, it was in its nature permanent and irrevocable, liable, under no circumstances whatever, to be annulled by the will of Great Britain, and capable of being lost to the United States in no other manner than by their own express renunciation or tacit abandonment.

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[Mr. Adams quoted a letter of his own written from Ghent, 26th December, 1814, to one of the American negotiations of the 1783 treaty, as follows:]

... There is, as you must remember, in the third article of the treaty of 1783, a diversity of expression by which the general fisheries on the Banks are acknowledged as our right, but these fishing privileges within the British jurisdiction, are termed liberties. The British government consider the latter as franchises forfeited ipso facto by the war, and declared they would not grant them anew without an equivalent. Aware that by this principle they, too, had forfeited their right to navigate the Mississippi, recognized in the same treaty of 1783, they now demanded a new provision to secure it to them again.

We were instructed not to suffer our right to the fisheries to be brought into discussion; we had no authority to admit any discrimination between the first and the last parts of the third article of the treaty of 1783. No power to offer or agree to an equivalent either for the rights or the liberties. I consider both as standing on the same footing: both as the continuance of franchises always enjoyed, and the difference in the expressions only as arising from the operation of our change from the condition of British subjects to that of a sovereign people, upon an object in one part of general, and in the other of special, jurisdiction. The special jurisdiction had been that of our

own sovereign: by the revolution and the treaty of peace, it became a foreign, but still remained a special, jurisdiction. By the very same instrument in which we thus acknowledged it as a foreign jurisdiction, we reserved to ourselves with the full assent of its sovereign, and without any limitation of time or of events the franchise which we had always enjoyed while the jurisdiction had been our own.

It was termed a *liberty* because it was a freedom to be enjoyed within a special jurisdiction; the fisheries on the Banks were termed rights because they were to be enjoyed on the ocean, the common jurisdiction of all nations; but there was nothing in the terms themselves and nothing in the article or in the treaty implying an intention or expectation of either of the contracting parties, that one, more than the other, should be liable to forfeiture by a subsequent war. On the maturest deliberation, I still hold this argument to be sound, and it is to my mind the only one by which our claim to the fisheries within British jurisdiction can be maintained. But after the declaration made by the British government, it was not to be expected that they would be converted to this opinion without much discussion, which was forbidden to us, and the result of this must have been very doubtful upon minds at all times inclined, and at this time most peculiarly prone, rather to lean upon power than to listen to reason. We stated the general principle in one of our notes to the British plenipotentiaries, as the ground upon which our government deemed no new stipulation necessary to secure the enjoyment of all our rights and liberties in the fisheries. They did not answer that part of our note; but when they came to ask a stipulation for the right of British subjects to navigate the Mississippi, we objected, that by our construction of the treaty of 1783, it was unnecessary. If we admitted their construction of that treaty, so as to give them a new right to the navigation, they must give us an equivalent for it. We offered an article recognizing the continuance of the rights on both sides; this offer met, however, with very great opposition among ourselves—for there were two of us against making it; and who thought the navigation of the Mississippi incomparably more valuable than the contested part of the fisheries. Not so did the British government think; for they, instead of accepting it, offered us an article stipulating to negotiate hereafter for an equivalent to be given by Great Britain for the right of navigating the Mississippi, and by the United States for the liberties of the fisheries within British jurisdiction. This was merely to obtain from us the formal admission that both the rights were abrogated by the war. To that admission I was determined not to subscribe. The article was withdrawn last Thursday by the British plenipotentiaries, who accepted our proposal to say nothing in the treaty about either, and to omit the article by which they had agreed that our boundary west from the Lake of the Woods should be the 49th parallel of north latitude. They at the same time referred again to their original declaration, that the fisheries within British jurisdiction would not hereafter be granted without an equivalent. It is evident that it must be the subject of a future negotiation. The only thing possible to be done now, was to preserve our whole claim unimpaired, and with that I consented to sign the treaty.

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## PART IV.

## DESPATCHES, REPORTS, CORRESPONDENCE, &amp;C.

No. 1.—1790: *Table of Fees taken by Customs Officers, as presented to the House of Assembly of Nova Scotia.*

	Collec- tors. Ster- ling.	Comp- trollers. Ster- ling.	Survey- ors & Search- ers. Ster- ling.	Weight- ers. Ster- ling.
For the general entry or clearance of vessels to and from Europe, Asia, Africa, West Indies and foreign ports.....	£ s. d. 13 6	£ s. d. 6 9	£ s. d. 6 9	£ s. d. 1 6
For the general entry or clearance of vessels to and from Quebec, New Brunswick, Newfoundland etc.....	9 0	4 6	4 6	1 0
For the entry of vessels or clearing from or to Cape Breton, Island of St. John and Bay of Fundy.....	4 6	2 3	2 3	6
For vessels coastwise from Cape Sable or Cape Canso or vessels to fish on the coast.....	3 0	1 0	1 0	1
For shallops decked and registered coastwise inward or outward.....	1 6	9	9	-----
For reports inwards and outwards foreign vessels.....	1 8	5	5	-----
For a cockpit.....	2 0	1 0	1 0	-----
For bonds.....	1 8	5	5	-----
For certificates to cancel bonds etc.....	2 0	1 0	1 0	-----
For surffernance to load or unload foreign trade.....	1 8	5	5	-----
For cancelling bonds.....	9	4½	4½	-----
For a bill of stores and list of men for foreign trade.....	1 8	5	5	-----
For anchorage of vessels from foreign ports.....	2 0	2 0	2 0	-----
For the registry of a vessel, certificate thereof, bonds and oaths for owner and master.....	13 0	4 4	-----	-----
For endorsing a new owner or Master or recording a register.....	2 2	1 1	-----	-----

N. B.—Open boats bringing wood, roots and other produce of the Province to this Port pay no fees.

No. 2.—1793: *Memorandum submitted to the Committee on the State of the Trade to Newfoundland, by Richard Routh, the Collector of Customs at Newfoundland.*

The Custom-house at Newfoundland was originally applied for by the trade, but was not established until the year 1762. Mr. Hamilton, the first Collector, went out, but found the people and climate so disagreeable, and the emoluments so inadequate to his expectations, that he returned to England the same year, and resigned; when Mr. Alexander Dun was appointed to succeed him: this gentleman, finding no regular fees established, had recourse to the port of Halifax, in Nova Scotia, for their list, agreeably to the Act of the 5th of His present Majesty's cap. 45, section 27, which recites, "and if no fees have been received as aforesaid, by any Officer in any port in such colony or plantation, such Officers shall, from and after the 5th day of July 1765, be entitled to such fees as have been received by the like Officers

in the nearest port, within any British colony or plantation, on or before the said 29th day of September, 1764." Upon which the merchants became dissatisfied, and threatened an abolition of the office almost as soon as it was established, and for which purpose frequent applications were made to the different Governors for the time being to assist them; to obviate which the Collector and Comptroller represented their situation to the American Commissioners of Customs, under whose direction they were at that time, and received orders from them to persist in their demand, and by whom they were officially furnished with the aforesaid Act, the perusal of which removed every difficulty that had arisen in the mind of Commodore Byron, then Governor of Newfoundland, and he supported the Officers accordingly; but notwithstanding these authorities, a certain number of merchants entered into a combination not to pay any fees whatever. About this time the illegal practices in Newfoundland increased, and the Officers made several seizures which so enraged the trade, that in February 1772 they presented a memorial to the right honourable the Lords of the Treasury, complaining of the

172 fees, which being referred to the Officers for their report, the Collector obtained leave to come to England to reply to the allegations therein; and after a full hearing, in May 1773, their Lordships dismissed the complaint; but on the Collector's return to Newfoundland, the trade obstinately refused payment of fees, and the Governor for the time being, having doubts if he was authorized to compel the payment of them, the Collector was obliged to make another voyage to England.—About this time the Act of the 15th of His present Majesty was passed, and the Collector called upon to give information upon the subject. In the course of this business, it was represented a hardship that fishing vessels, commonly called Bankers, and fitted out with green men, &c. in terms of the said Act of the 15th, should pay the same fees as those ships and vessels which carried merchandize and cocketable goods; and government, willing to gratify them in any request that appeared reasonable, complied in part with their desire, taking from the Officers, on that description of vessels actually employed in catching the Fish and carrying no cocketable goods whatever, all their fees, except 2s. 6d. to be paid on the first and last report, for these vessels make many trips in a season from the banks into port and return again; and as this description of vessels were numerous, the Collector was allowed an extra salary as a compensation for his losses thereon. The intention and meaning of this Act, I trust, will appear by the 7th and 8th sections, which recite, "And it is hereby further enacted by the authority aforesaid, that from and after the first day of January one thousand seven hundred and seventy-six, all vessels fitted and cleared out as fishing ships, in pursuance of this Act, or of the before-mentioned Act, made in the tenth and eleventh years of the reign of the late king William the Third, and which shall be actually employed in the Fishery there, or any boat or craft whatsoever employed in carrying coastwise, to be landed or put on board any ships or vessels, any Fish, Oil, Salt, Provisions, or other necessaries, for the use and purpose of that Fishery, shall not be liable to any restraint or regulation with respect to days or hours of working, nor to make any entry at the Custom-house at Newfoundland, except a report to be made by the master on his first arrival there, and at his clearing out from thence; and that a fee, not

exceeding two shillings, and sixpence, shall and may be taken by the Officers of the Customs at Newfoundland for each such report; and that no other fee shall be taken or demanded by any Officer of the Customs there, upon any other pretence whatsoever relative to the said Fishery, any law, custom, or usage to the contrary notwithstanding."

"Provided always, and be it enacted, that in case any such fishing ship or vessel shall, at her last clearing out from the said Island of Newfoundland, have on board, or export any goods or merchandize whatsoever, except Fish, or Oil made of Fish, such ship or vessel, and the goods thereon laden, shall be subject and liable to the same securities, restrictions, and regulations, in all respects, as they would have been subject and liable to if this Act had not been made, any thing hereinbefore contained to the contrary notwithstanding."

Here it was expected that all controversy would end, but on the Collector's return to Newfoundland, the trade still continued to refuse to pay fees (alleging that His Majesty's ministers had no authority to establish a Custom-house at Newfoundland) and he was obliged to make another voyage to England to represent the melancholy case to His Majesty's ministers, after suffering the loss of emoluments for near three years, for which he received a compensation from Government, and in an Act of the 16th of His present Majesty, a clause was inserted confirming to the Officers at Newfoundland the like fees as taken at Halifax, in Nova Scotia, on or before the first day of January 1768, the third section of which recites, "That the Officers of His Majesty's Customs in the said island of Newfoundland shall be and are hereby declared to have been entitled to ask, demand, take, and receive such fees for all business done by them in the execution of their duty, as were legally demanded and taken by the like Officers of the Customs at the port of Halifax in Nova Scotia, on or before the first day of January one thousand seven hundred and sixty-eight," &c.

This Act put a stop to the persecution of the Officers, and the fees were uniformly paid, agreeably to the Halifax list, (except for the fishing vessels called Bankers) until the year 1785, when the subject was revived again, and another complaint made, the merits of which were agitated before the right honourable the Lords of Trade, in the month of January of that year, and the Collector was in London six weeks in attendance; and after a long hearing of all parties, their Lordships confirmed the fees of the Officers as before described; and the Witness from Dartmouth, Mr. Newman, made the following reply:

"Then, my Lords, we must submit, and put up with the inconvenience; and we don't know that it is so very great."

From that time we have gone on with more harmony, only that whenever we have, in the execution of our duty, done any disagreeable thing, or made a seizure, we have constantly been threatened with another trial of strength, either to abolish the office, or take from us our fees; and in order to facilitate this undertaking, they made a very unfair representation last year, desiring a clause in the Judicature Bill of last Sessions, rendering the Officers of the Customs at Newfoundland incapable, as long as that Act was in force, from acting as Justices of the Peace, which has been the means of our being both privately and publicly insulted, and in particular the Comptroller,

whose windows have been broke, and the life and comfort of his family endangered thereby.—They also boast, that their success in that particular is one step towards the loss of our fees, if not the abolition of the Custom-house. It was perfectly understood at the time, that fishing ships meant only bankers, on board of which the Fish is first caught; and not those ships that make freights, carrying in the first place all kinds of goods and merchandize from Great Britain, and among other articles those on which debentures are allowed, by which the Revenue is much concerned. From Newfoundland the ships are laden with dry cured Fish, on which they make good freights to the markets of Spain, Portugal, Italy, &c., and the islands in the West Indies; the latter ships, were formerly called Sack Ships; but to take advantage of the Custom-house Officers, the trade aimed at taking out fishing certificates, and by that method, if possible, call them Fishing Ships, whereas there never was any Fish caught on board of them.

173 Having thus far given the honourable Committee a history of the difficulties and persecutions the Officers have suffered in the execution of their duty, permit me to submit the following list of fees, being a copy of that received from the Officers of the port of Halifax, in Nova Scotia (which was confirmed to us by the right honourable the Lords Committee of Trade in the year 1785) together with those prescribed by the Act of the 15th of His present Majesty, which alone has governed our demand; of course we feel a pleasure arising from being conscious that we have not in any respect deviated from the before-mentioned authority; and that we trust our conduct will bear any further investigation that may be thought necessary.

*List of fees.*

Particulars.	Collec- tor.	Comp- roller.	Sur- veyor.
A new Register.....	14 0	4 4	-----
Endorsing ditto.....	2 6	1 0	-----
Recording ditto.....	2 6	1 0	-----
Topsail Vessel Inwards, Entry or Report.....	13 6	6 9	6 9
Ditto outward, ditto.....	13 6	6 9	6 9
Other Vessels inward, Entry or Report.....	10 0	4 6	4 6
Ditto outward, ditto.....	10 0	4 6	4 6
Sufferance Permit to load or unload, report List Men, each Bond, &c., for each.....	1 6	6	6
Cocket, Certificate to cancel Bond, each.....	2 0	1 0	1 0
Bill of Health.....	5 0	2 6	2 6
Anchorage.....	2 0	2 0	2 0
Coasters Inwards.....	2 6	1 0	1 0
Ditto Outwards.....	2 6	1 0	1 0
Manifest.....	1 6	6	6
All Office Entries.....	1 6	6	6
General Warrant.....	2 6	1 0	1 0

In addition to the foregoing list of fees, there is paid to the Governor's Secretary 1*l.* 16*s.* for Mediterranean passes, and 10*s.* 6*d.* for every register. The Naval Officer's fee upon registers is 6*s.* 8*d.*; he has also fees for the entry and clearance of every vessel, and every document mentioned in the above list.

Fishing ships or bankers, qualified conformably to an Act of the 10th and 11th of king William the Third, or an Act of the 15th of His present Majesty's reign, are subject only to the payment of 2*s.* 6*d.* to the Officers of the Customs, in lieu of all other fees for each report.

N. B. Exclusive of the foregoing fees, the Officers consider themselves entitled to gratuities from the merchants, under the Act of the

6th and 7th of William the Third, for attending upon urgent occasions, at the landing goods out of ships wrecked or stranded on the coast, and at the landing and reshipping goods out of and into ships putting into the port in distress to refit, which gratuities are more or less as the merchants and Officers agree, and are regulated by the difficulty attending such services, viz.

	£	s.	d.		£	s.	d.
Collector from -----	0	10	6	to	6	6	0
Comptroller -----	0	7	6	to	4	14	6
Surveyor -----	0	5	8	to	3	8	0

But these fees we do not remember to have taken at any time, because we have seen no ships in distress, except those as have so much engaged our humanity as to induce us to be more ready to afford relief and assistance to the parties, than to exact any gratuity from them.

The Custom-house Officers at Newfoundland attend upon the trade early and late, keeping no holidays; and even on Sundays, when it has been found beneficial to the trade, they have never refused their attendance, and constantly have given them credit, from the spring till the months of November and December, for their fees, &c. taking then bills of exchange, by which they frequently lose money, and in a recent case more than 50*l*. Such circumstances would not be mentioned by the Officers, but to show that they have not, by any illiberal or oppressive conduct on their parts, merited the present, or indeed any complaint against them; and they have constantly pledged themselves to remove any difficulties that should arise, provided it could be done with propriety.

It is hoped, that the predicament in which the Officers have been and continue to be placed, will be the means of such future laws and regulations for their protection, as will secure to them that safety and justice, which His Majesty's servants employed in the Revenue enjoy in other situations, without which the most solemn decisions will not avail, particularly in Newfoundland, where the field for an extensive contraband trade is greater than can be described, particularly on debenture goods, the produce and manufactures of Europe, as well as that of the United States of America; and from a knowledge of the trade of Newfoundland, and the experience the present Officers have, it is presumed, that in an island in which there are such numerous harbours, such refractory inhabitants, and at present no established police, the Officers cannot but meet with infinite difficulty in the discharge of their respective duties.

It is not only the interest of the fair trader, but essentially that of the public, that the restrictions and regulations of the Act of Navigation, and the Laws of Trade, should be vigilantly guarded and strictly enforced, if not, the benefits derived by the Fishery will soon be lessened.

In addition to the foregoing, I beg to observe, that were the  
174 idea of the gentlemen of the trade to take place, the fees upon the whole trade of Newfoundland, would, for all the Officers, be 125*l*. per annum.

I submit therefore to what a humiliating situation they must be reduced, if such an arrangement was to take place.

No. 3.—1805, November 30: *Extract from Memoirs of Mr. J. Q. Adams.*

WASHINGTON, 30.—Paid visits this morning to the President, whom I found at home, and the Secretaries of State and of the Navy, whom I did not see. Called also on Mr. Otis at his office, where I met Mr. Plumer. At the President's door I met Mr. Israel Smith and Mr. Gaillard, who were on the same visit as myself. The President mentioned a late act of hostility committed by a French privateer near Charleston, South Carolina, and said that we ought to assume as a principle that the neutrality of our territory should extend to the Gulf Stream, which was a natural boundary, and within which we ought not to suffer any hostility to be committed. Mr. Gaillard observed that on a former occasion in Mr. Jefferson's correspondence with Genest, and by an Act of Congress at that period, we had seemed only to claim the usual distance of three miles from the coast; but the President replied that he had then assumed that principle because Genest by his intemperance forced us to fix on some point, and we were not then prepared to assert the claim of jurisdiction to the extent we are in reason entitled to; but he had then taken care expressly to reserve the subject for future consideration, with a view to this same doctrine for which he now contends. I observed that it might be well, before we ventured to assume a claim so broad, to wait for a time when we should have a force competent to maintain it. But in the mean time, he said, it was advisable *to squint at it*, and to accustom the nations of Europe to the idea that we should claim it in future. The subject was not pushed any farther.

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No. 4.—1815, July 19: *Letter, Mr. Baker to Viscount Castlereagh.*

WASHINGTON, July 19, 1815.

MY LORD, Mr. Monroe having requested an interview with me at the Department of State, I accordingly waited upon him at the time appointed.

He stated that he was desirous of speaking to me upon one or two points, the first of which related to the establishment which the United States had possessed before the war on the Pacific Ocean at the mouth of the Columbia River, but which had been broken up by a naval force sent by the British Government for that purpose. He conceived that it fell within the meaning of the 1st Article of the Treaty of Ghent, and ought to be restored, for otherwise it would have been particularly excepted in the Treaty, as had been the case with the Passamaquoddy Islands, and requested to know whether I agreed in that opinion.

I replied that I had not considered the subject which was unexpected by me; that in fact I did not immediately call to mind what was the result of the expedition to which he alluded, and was not aware that any persons whatsoever had been left upon the spot who could effect the restoration required, should the case be thought to come under the Treaty, but that I was ignorant of any transaction between the two Governments which recognized the claim of the United States to any part of the Coast of the Pacific Ocean.

He did not state the foundation on which the claim to this territory rested, insisting merely upon the fact of its having been captured from the United States during the war which brought it within the Treaty. He then proceeded to observe that he had a complaint to make respecting the interruption which had been given to several American vessels fishing off the coast of the British North American Provinces, which had been ordered away by one of His Majesty's ships of war, and warned by a notice endorsed on their papers not to return. This he said was a violation of a clear right which the United States possessed under the Treaty of 1783, and which the American Government conceived to be still in force, owing to the peculiar character of that Treaty.

In my answer I reminded him of the firm and decided language which had been held by Great Britain throughout the negotiations at Ghent with respect to the supposed continuance of the right of the United States to catch and dry fish within His Majesty's jurisdiction in North America; that this privilege had been distinctly and repeatedly stated to the American Commissioners to have been purely of a conventional nature, to have therefore ceased on the war; and that as it had not been renewed by the late Treaty of Peace, it could not be considered at present in existence. I remarked that the doctrine which had been advanced by the American Commissioners was judged equally novel and extraordinary, and that no satisfactory reasons had ever been adduced in support of it.

Mr. Monroe did not press the subject further, and led me to expect that he would make a written communication respecting it, and likewise relative to the restoration of the settlement on the Columbia River. In some conversation which afterwards ensued he complained of the want of reciprocity which existed in the commercial intercourse between the United States and the British Colonies, and thought that the former would be justified in placing the same restrictions upon the navigation and trade with the Colonies which were enforced against the United States. Although these  
175 remarks were merely thrown out in the course of conversation, with no apparent view to any result, I have thought it right to mention them, as tending to show the present tone of this Government.

I received this morning the note respecting the interruption to the fishery, a copy of which is inclosed. It does not, it will be perceived, embrace the wide subject of the alleged right, as I had reason to believe would have been the case from what had passed, but is confined to much narrower ground. It states the instance of one vessel fishing in longitude  $65^{\circ} 20'$ , latitude  $42^{\circ} 41'$ , and said to have been distant about 45 miles from Cape Sable, which was ordered away by His Majesty's brig *Jaseur*, as well as the other American vessels in sight, and warned by an endorsement on her papers not to come within 60 miles of the coast. Mr. Monroe states this measure to be altogether incompatible with the rights of the United States, and therefore presumes it has not been authorized by His Majesty's Government. Both the distances mentioned, it will be observed, are without His Majesty's maritime jurisdiction. I have sent copies of the note and inclosure to Rear-Admiral Griffiths, the Naval Commander-in-chief at Halifax, requesting information as to the facts alleged, as likewise an explanation respecting the grounds on which

he had fixed upon the precise distance of 60 miles, should the statement on this point be correct.

I had received a letter from the Rear-Admiral by the last mail acquainting me with the measures which he had adopted for preventing the citizens of the United States from taking and drying fish within His Majesty's jurisdiction, and expressing a desire that I would communicate to him any information which I could furnish relative to the sentiments of His Majesty's Government on this head. I have the honour to inclose a copy of this letter, and of the answer which I have returned, in which I have been careful strictly to conform to the language of the instructions given to the Commissioners at Ghent, which I have taken for the guidance of my conduct on this subject.

I have, &c.

ANTHONY ST. JNO. BAKER.

P. S.—Since writing the above I have received Mr. Monroe's letter relative to the restoration of the settlement on Columbia River, a copy of which I beg leave to inclose. It is my intention in my reply to refer him to Rear-Admiral Dixon who commands in those seas.

A. B.

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No. 5.—1816, April 16: Letter, Viscount Castlereagh to Mr. Bagot.

FOREIGN OFFICE, April 16, 1816.

SIR, In the despatch No. 3 addressed to you by Earl Bathurst bearing date the 20th November, 1815, your particular attention was directed to the discussion brought on by the Government of the United States with that of Great Britain since the restoration of peace by the Treaty of Ghent, on the subject of the fisheries. Copies of the notes which had been exchanged between the American Minister in London and His Majesty's Government, were therein transmitted for your information; and you were directed to conform your language in your intercourse with the American Secretary of State to the principles which had been brought forward in this correspondence on the part of your Court.

Whilst these discussions were passing in Europe, you will observe from the inclosed documents, that, in pursuance of the construction of that Treaty as contended for by the British Government, the naval officer commanding on the Halifax station had taken measures for amicably removing all American fishing vessels from within the British jurisdiction, warning them under pain of seizure not to be again found either within the harbours or within the maritime limits of the British sovereignty on those coasts.

You will find in Lord Bathurst's notes the grounds fully explained upon which the liberty of fishing and drying within our limits, as granted to the citizens of the United States by the Treaty of 1783, was considered to have ceased with the war, and not to have been revived by the late Treaty of Peace. You will also find therein detailed the serious considerations affecting not only the prosperity of our own fishery, but the general interests of the British dominions in matters of revenue as well as of Government, which made it incum-



bent upon His Majesty's Government to oppose the renewal of so extensive and injurious a concession within the British sovereignty to a foreign State, founded upon no principle of reciprocity or adequate compensation whatever.

That this determination however was not taken in any unkind feeling towards America, or from any illiberal wish to deprive her subjects of adequate means of engaging in the fishery, will appear from the uniform avowal which that correspondence contains of the readiness of the British Government to enter into negotiation with the Government of the United States, with a view of combining a suitable accommodation for their fishery with those regulations which the British Government felt it necessary to adopt for the internal administration and prosperity of the King's dominions, and in order to afford a more convincing proof of their desire to avoid every unpleasant collision with the American States, and under an impression that many of their subjects, possibly in ignorance of the discontinuance of these privileges, might have embarked in the fishery for that particular year at a considerable expense, orders were sent out in the month of June to His Majesty's naval officers, not to obstruct, for the remainder of the season, American vessels from enjoying the accustomed accommodation, but to confine themselves to rendering the notice general against their return another year.

You will see by Mr. Adams's note of January 22nd, that having referred to his Government for further instructions, he is directed to adhere to the pretensions as before brought forward on the 176 part of the United States, but to declare at the same time, the disposition of the American Government to reconcile, if possible, by amicable negotiation the practical views which the respective Governments have it in contemplation to effectuate in the arrangement of this question.

In the spirit of this principle, instead of prolonging the controversy which might easily be done, in refutation of Mr. Adams' reasoning, it has rather been the endeavour of His Majesty's Ministers to frame some satisfactory arrangement which they might at once offer to the American Government as a pledge of good-will, and as the means of reconciling their respective views. Some delay has necessarily occurred, partly from the press of Parliamentary business, and partly from the absence of Sir R. Keats, whose judgment upon this subject, as well from his eminent abilities, as from his experience as Governor of Newfoundland, on this particular question, it was their duty to carry along with them. Having, after consultation with that officer, framed a proposition which they persuade themselves from its liberality cannot fail to reconcile all differences, I was authorized to open the proposition to Mr. Adams, provided he felt himself furnished with the necessary powers to conclude an agreement upon this subject, and I accordingly had an interview with that gentleman; but finding that he had neither precise instructions, nor powers to conclude, it has been deemed expedient to transfer the negotiation to America, and you will receive herewith the necessary full powers, authorizing you to sign with the American Secretary of State an agreement on this point, and to issue provisional instructions to His Majesty's officers civil and military in conformity thereto, in order that every possible inconvenience and collision may be avoided, and

that the citizens of the United States may have the enjoyment, as early as may be, of the proposed concessions.

The object of the Americans being, that in addition to the *right* of fishing declared by the first branch of Article IV of the Treaty of 1783, permanently to belong to them, they should enjoy the privilege of having an adequate accommodation both in point of harbours and drying ground on the unsettled coasts within the British Sovereignty. It has been the endeavour of His Majesty's Government to assign this accommodation with sufficient liberality, without abandoning that control within the entire of their *own* harbours and coasts, which the essential interests and the principles of their Colonial system require.

I cannot better enable you to enter upon this negotiation than by sending you a private memorandum received from Lord Melville, in which Sir R. Keats's opinion is clearly stated. You will, in conformity to this suggestion, propose the Arrangement No. 1, in the first instance, to the American Government; or you may, as an alternative, offer them the coast as described in the second proposition. Should the American Government urge objections to accept of either of these propositions separately, you are authorized, in the last resort, to yield both to them upon their distinctly agreeing to confine themselves to the unsettled parts of the coasts so assigned, abandoning all pretensions to fish or dry within our maritime limits on any other of the coasts of British North America.

The proposed assignment of coast you will observe is locally the most convenient from its being adjacent to the American States, that could have been selected. It is also to be observed, if the concession which both propositions involve should be made, that the American fishing vessels, from whatever quarter the wind may blow, will have a safe port under their lee.

Further than this His Majesty's Government cannot authorize you to go, and when the Government of the United States consider as well the footing upon which the navigation of the Mississippi has been left by the Treaty of Ghent, as also the prohibition which they have now imposed to our trading with the Indians within their boundary line, they surely cannot expect a larger surrender of accommodation within the British jurisdiction unless they conceive, which is wholly untenable, that the British Sovereignty is of such a qualified description as to be destitute of all the ordinary rights incident to that of every independent state, viz., to regulate its internal police in matters of trade, revenue and government if necessary to the total exclusion of aliens.

So soon as you may have come to a settlement with the American Government, you will notify the same to His Majesty's officers commanding in his North American provinces; with directions for the regulation of their conduct, in conformity to the stipulations agreed upon.

You are in like manner authorized, pending your discussions with the American Government, to issue such instructions as you may deem expedient to the said officers to prevent any occurrence happening which might either embarrass the negotiation or disturb the harmony happily subsisting between the two States. And I am to acquaint you that Earl Bathurst has received the Prince Regent's commands to instruct the said officers to obey such orders as they may receive from time to time from you for this purpose.

I am, &c.

CASTLEREAGH.

No. 6.—1817, *March 22: Letter, Viscount Castlereagh to Mr. Bagot.*

FOREIGN OFFICE, *March 22, 1817.*

SIR, Your despatch No. 2 of the 7th January, in which you report the result of your negotiation with the American Government, on the subject of the fisheries, has been received and laid before the Prince Regent.

His Royal Highness regrets that the very liberal accommodation which you were authorized to offer for the purpose of carrying on their fishery has not at once been accepted.

It is satisfactory, however, to observe that nothing has been done on the part of the American Government pending these discussions which can indispose this Government to receive from that of 177 the United States, and to consider in the spirit of conciliation, any suggestion which they may have to offer, by which the accommodation intended to be afforded may be better effectuated without leading to consequences inconsistent with the interests of Great Britain.

The Prince Regent fully approves the motives which induced you to decline receiving any counter projet from the American Secretary of State.

Undoubtedly no negotiation could be entertained which might, in its form, seem to imply any doubt on the part of this Government as to the sovereign rights of Great Britain, but as Mr. Monroe persuades himself that the British Government upon further inquiry, might, without prejudice to its own interests, accede to the proposition, which he was desirous of making to them through you, His Royal Highness authorizes you to learn from the American Government the precise extent and nature of the accommodation which it seeks to obtain.

As soon as you shall forward to me the proposition in question, which you will express a hope may be framed in such a spirit of moderation as not to impose on this Government the necessity of meeting it with a refusal, I shall lose no time in submitting the same to the favourable consideration of His Royal Highness.

In the meantime I think it right to apprize you, and of this it may be desirable that the Government of the United States should be aware, in order that any unpleasant collision may be avoided, that the orders for the exclusion of American fishermen from our territorial jurisdiction in North America and Newfoundland are in full force, and will continue to be acted upon.

If therefore any unnecessary inconvenience has resulted or should result to the American fishery in the ensuing season, from the rejection of the liberal proposals with which you were charged, this inconvenience at least is not fairly attributable to the British Government, the proposition for affording to the Americans every reasonable accommodation having been opened by you to the American Secretary of State, as far back as the month of July in the last year.

I am, &c.

CASTLEREAGH.

No. 7.—1817, May 10: *Letter, Earl Bathurst to the Lords Commissioners of the Admiralty.*

DOWNING STREET, 10th May, 1817.

MY LORDS, Mr. Adams, the Minister Plenipotentiary of the United States of America, having made an official communication to Lord Viscount Castlereagh, His Majesty's Principal Secretary of State for Foreign Affairs, that it was the intention of the President of the United States to renew the negotiation for an amicable settlement with respect to the fisheries on the coasts of the British Colonies in North America, and having been directed to make an application that the order given last year conditionally to His Majesty's naval officers commanding on the North American stations, not to interrupt or disturb the fishermen of the United States, might be renewed during the approaching season, His Royal Highness the Prince Regent being persuaded from this official communication that it is not only the sincere desire of the President of the United States to come to an amicable arrangement, but also that the President, being already in possession of the views of Great Britain, is now led to entertain a strong expectation that a settlement which shall reconcile the interests of both parties may without any material delay, be effectuated; and His Royal Highness being, moreover, desirous of seizing this the earliest occasion since the elevation of the President the first magistracy of the United States of evincing to him and to the United States, His Royal Highness's disposition to cultivate a good understanding with those States, has commanded me to direct your Lordships to instruct His Majesty's commanders on the American coast to suspend, in regard to vessels of the United States, during the approaching season the execution of the instruction given to seize and detain all vessels belonging to foreign Powers which shall be found taking and drying fish in any of the unsettled bays, harbours, and creeks of His Majesty's possessions in North America. In order, however, that the subjects of the United States should not be hereby mislead into a belief that this indulgence is to continue beyond the expiration of the season, His Majesty's cruizers must distinctly warn the said vessels of the United States that the suspension of the instructions above recited does not extend beyond that period. Your Lordships will further instruct the naval commanders on the American coasts to cause it to be signified to all the vessels of the United States which proceed for the purpose of fishing on the coast of His Majesty's North American possessions, that the liberty hereby allowed to vessels of the United States to frequent for this season the unsettled bays, harbours, and creeks, is by no means to be construed to extend to any bay, harbour, or creek which is actually settled, but that they are instructed forthwith to seize and detain all vessels of the United States which shall be found taking and drying fish on any part of the coast belonging to His Majesty which shall be settled.

I have the honor to be, &c.

(Signed)

BATHURST.

The LORDS COMMISSIONERS  
of the Admiralty.

- 178 No. 8.—1817, August 29: Decree pronounced by the Honourable Michael Wallace, Judge of the Vice-Admiralty Court at Halifax, Nova Scotia, in the case of American fishing-vessels, seized and detained by His Majesty's ships of war.

This case involves a question of great national importance: Under that impression, it has had as much consideration on my part, as my humble talents are capable of giving it.

I entirely accede to the principle laid down by the Advocate-General, that the American Government when it commenced hostilities against Great Britain, cut the cord on which their Treaty of 1783, with our Government, hung, and thereby dissolved every condition, obligation and privilege, it contained. But, as American subjects have long enjoyed, under that Treaty, the privilege of fishing on our coasts, and there being no specific notification from our Government, that I know of, since the Treaty of Ghent, published on the subject, for me to have recourse to; I cannot adopt so serious a measure as the condemnation of the property of individuals who seem to have been generally ignorant of the intentions of our Government with respect to the prohibition; besides, it does not appear to the Court, that any of them were found in the act of catching fish, or trading with the inhabitants in any of our bays or harbours, but merely seeking a little fresh water, which under existing circumstances, I cannot view in the light of an infringement of our rights.

Independent of this consideration, were I inclined to enforce the principle of national law against the claimants in this case, I should be at a loss what penalty to pronounce upon the aggressors.

In other cases in which foreigners are seized for unlawful traffic, there are positive Acts of Parliament, inflicting a forfeiture of the property and other penalties, for the offence: is it a matter of course in this instance, that these vessels are to be condemned, and forfeited to His Majesty? I cannot think so.

I have no law to guide me in my judgment; no proclamation, or Orders of Council; no instructions of any kind, by which I can measure the punishment to be inflicted for this infringement of our Colonial rights.

It is a totally new question, and one that I conceive to be involved in much doubt and difficulty, in consequence of the silence of the Treaty of Ghent on this very important subject.

I am not ignorant that negotiations have been carried on respecting the fishery in question, between our Government and that of America: those negotiations were broken off in January last, it is true; but it is equally true, that they have been renewed, and are still pending.

Under such circumstances, therefore, I do not consider myself justified in condemning this property to His Majesty; but shall decree the vessels, and property belonging to them, to be restored to the claimants, on paying costs—from which decree, if the seizers are dissatisfied, they are at liberty to appeal to a superior Court; where it is probable the subject has been under the discussion of able minds, and where the intentions of our Government, with respect to it, can be fully ascertained.

No. 9.—1818, *April 7: Letter, Mr. Bagot, British Minister at Washington, to Viscount Castlereagh.*

WASHINGTON, *April 7, 1818.*

MY LORD, I have the honour to inclose to your Lordship the copy of a letter which I received on the 14th of last month from Rear-Admiral Sir David Milne, acquainting me with the orders which it was his intention to give to the cruizers under his command in regard to foreign vessels found fishing during the present season within the jurisdiction of His Majesty's North American territories.

Some days after the receipt of this letter I took an opportunity of informing Mr. Adams of the instructions which the Admiral was about to issue, expressing, at the same time, my regret that the American Government should have delayed to make the propositions which I had been so long taught to expect, and which might possibly have led to some arrangement in regard to the vessels of the United States, which would have exempted them from the operation of these orders.

Mr. Adams assumed an air of some surprise at this communication, and, having repeated several of the reasons which he had formerly assigned for the delay which had occurred, requested to know whether I could not take upon myself to suggest to the Admiral the propriety of again suspending the orders of His Majesty's Government upon this subject. I told him that I certainly could not take upon myself any such responsibility—that the orders of His Majesty's Government were peremptory; and that their suspension had only been continued through the last summer in compliance with his own particular request to your Lordship, and under an expectation of immediately receiving the propositions which the President had, at that time, expressed a wish to bring under the consideration of His Majesty's Government.

I have the honour to inclose to your Lordship a copy of the answer which I have returned to Sir David Milne's letter.

I confess to your Lordship that I am totally at a loss to account for the remarkable delay which has taken place in this business—unless indeed the difficulty is to be solved by a supposition that this Government is not in fact desirous of coming to any arrangement whatever upon the subject. I have for several months constantly availed myself of every opportunity of bringing the matter under

Mr. Adams' notice, and I have never failed to remind him  
179 that it was becoming impossible for me to transmit the expected propositions to your Lordship with any hope of receiving your Lordship's decision upon them before the commencement of the present fishing season. Mr. Adams has at different times assigned a variety of reasons for this delay. At one time he attributed it to the necessity of procuring further information respecting the coast—at another to the numerous engagements of the President during the session of Congress—at another to some difference of opinion which he said prevailed upon the subject amongst the persons principally interested in the trade; and at another to the want of a Report with which your Lordship had promised to furnish him when in England, showing the real injuries and inconveniences which had arisen to His Majesty's settlements from the practices of the American fishermen. In consequence of the last of these reasons I have furnished him with a copy of the letter of the 28th of May 1816 from the Col-

lector and Comptroller of the Customs at Shelburne in Nova Scotia to the Commissioners of the Customs which was transmitted to me in Earl Bathurst's despatch No. 17 of October 1816, and which I conceive to be the Report to which your Lordship must have referred. I have omitted however that part of it which relates to the Attorney-General's opinion upon the legality of capturing foreign vessels.

It is proper that I should acquaint your Lordship that in one of the last conversations which I had with Mr. Adams upon this business, he gave me to understand that it had been found impossible to make any proposition which should be framed upon the principle of an assignment of any particular portion of coast—for that, as it was now known that the small fish which are used as bait, and without which the cod-fishery cannot be carried on, are in a constant state of migration, and that they occasionally desert for several years whole tracts of the coast, it might happen that, by an arrangement made upon such a principle the United States might be altogether excluded from the necessary means of engaging in the pursuit.

Whenever Mr. Adams shall furnish me with the promised propositions I shall not fail to take an immediate occasion of forwarding them to your Lordship, but I shall not think it necessary to advert again myself to the subject at any of our future conferences.

I have, &c.

CHARLES BAGOT.

The Right Honble.

VISCOUNT CASTLEREAGH K. G.

No. 10.—1852, December 6: *Extracts from Report of Mr. Lorenzo Sabine, on the principal fisheries of the American Seas. Transmitted to the United States Secretary of the Treasury.*<sup>a</sup>

Previous to 1650 the people of Hull were allowed to seine fish at Cape Cod; but some irregularities having occurred, the Plymouth court passed an order of interdiction, and limited the fishery there to persons belonging to the towns of Plymouth, Duxbury, and Nauset, under restrictions intended to insure an "orderly course in the management of it."

Subject to continual annoyance and interruption by the fishermen of Massachusetts, the court, in 1668, directed that a communication should be sent to the government of that Colony, "to request them to take some effectual care for the restraint of this abuse, as much as may be." The property at Plymouth was "rated" the same year. All persons "engaged about fishing" were "valued at twenty pounds estate." This was high; inasmuch as Edward Grey, whose stock in trade was the most valuable, was rated only "six score pounds."

In 1670, a valuation was made of the "fish-boats," and four were estimated at twenty-five pounds each. Though called boats—and I suppose without decks—many, probably, were of several tons burden, and could be safely employed at a distance from shore. The fisheries,

<sup>a</sup> Other extracts from this Report are printed in the Appendix to the British Case at pp. 199–201, and in the Appendix to the United States Case at pp. 1180–1299.

at this period, were considered as well established, and were steadily and profitably pursued.

Fifty years had now elapsed since the settlement of Plymouth. The country, back from the sea, was yet a wilderness. A generation, born in the colony, had attained manhood. Religious worship was maintained in all the towns, but there were no public schools. Few of the Mayflower pilgrims were then alive; and the number of educated persons was small. A proposition had been made, as appears by the proceedings of the court, to provide schoolmasters "to train up children to reading and writing;" but without results. The profits of the mackerel, bass, and herring fisheries at Cape Cod, were now granted to found a **FREE SCHOOL**; and in 1671, under John Morton as teacher, and Thomas Hinckley as steward of the fund, such a school was opened in the colony. This is a most interesting incident; the Cape which afforded the first shelter to the fathers, supported the first public seminary for the education of the children!

Morton, who was a nephew of the secretary of the colony, proposed merely to teach the youth of *one* town "to read, write, and to cast accounts." But a grammar school was soon established in Plymouth; and several were actually in operation in other places as early as the year 1680.

The fisheries, I conclude, were considered public property, and were generally leased to individuals for the benefit of the colony, or of particular towns. The subject of "rents" and of "profits" is continually referred to in the records, and orders to grant leases to petitioners, or to protect lessees in the enjoyment of the privileges stipulated in the covenants with them, are of frequent occurrence.

An ordinance of the latter description of extreme severity was 180 passed in 1678—the court directing that all fishing vessels not belonging to the colony should be seized for public use by warrant from the governor, or one of his assistants, and that the lessees of the colony fisheries should be entitled to damages, to be paid them out of the proceeds of the vessels seized and confiscated. The people of Massachusetts were alone exempted from the penalties of this extreme measure.

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Whoever examines the records of Congress will find that between February and August, 1779, the various questions connected with the fisheries were matters of the most earnest and continued debates, and of the most anxious solicitude. During the discussions upon a proposition to, open a negotiation for peace, Mr. Gerry introduced the following resolutions. First: "That it is essential to the welfare of these United States that the inhabitants thereof, at the expiration of the war, should continue to enjoy the free and undisturbed exercise of their common right to fish on the Banks of Newfoundland, and the other fishing banks and seas of North America, preserving inviolate the treaties between France and the said States." Second: "That an explanatory article be prepared and sent to our minister plenipotentiary at the court of Versailles, to be by him presented to his Most Christian Majesty, whereby the said common right to the fisheries shall be more explicitly guarantied to the inhabitants of these States than it already is by the treaties aforesaid." Third: "That in the treaty of peace with Great Britain, a stipulation be made on their part not to disturb the inhabitants of these States in the free exercise



of their common right to the fisheries aforesaid, and that a reciprocal engagement be made on the part of the United States." Fourth: "That the faith of Congress be pledged to the several States, that, without their unanimous consent, no treaty of commerce shall be formed with Great Britain previous to such stipulation." Fifth: "That if the explanatory article should not be ratified by his Most Christian Majesty, nor the stipulation aforesaid be adopted by Great Britain, the minister conducting the business shall give notice thereof to Congress, and not sign any treaty of peace until their pleasure be known."

The opposition to these resolutions was determined and violent in the extreme. Those who enlisted against them insisted that it was unreasonable and absurd to ask or expect that a war commenced for freedom, should be continued for the humble privilege of catching fish. Mr. Gerry, who had grown up among the fishermen of Massachusetts, replied: "It is not so much fishing," said he, "as enterprise, industry, employment. It is not fish merely which gentlemen sneer at; it is gold, the produce of that avocation. It is the employment of those who would otherwise be idle, the food of those who would otherwise be hungry, the wealth of those who would otherwise be poor, that depend on your putting these resolutions into the instructions of your minister."

The majority of Congress sustained Mr. Gerry's proposition, in fifteen divisions on calls of the ayes and noes, and rejected numerous amendments offered to modify them; but consented, finally, to the adoption of the single declaration, that "although it is of the utmost important to the peace and commerce of the United States that Canada and Nova Scotia should be ceded, and more particularly that their equal common right to the fisheries should be guaranteed to them, yet, a desire of terminating the war has induced us not to make the acquisition of these objects an ultimatum on the present occasion."

This declaration appears to have been the result of concession and compromise; since Mr. Adams was instructed, in September, 1779, first, "that the common right of fishing should in no case be given up;" second, "that it is essential to the welfare of all these United States that the inhabitants thereof, at the expiration of the war, should continue to enjoy the free and undisturbed exercise of their common right to fish on the Banks of Newfoundland, and all the other fishing-banks and seas of North America, preserving inviolate the treaties between France and the said States;" third, "that our faith be pledged to the several States that without their unanimous consent no treaty of commerce shall be entered into, nor any trade or commerce whatever carried on with Great Britain, without the explicit stipulation hereinafter mentioned. You are, therefore, not to consent to any treaty of commerce with Great Britain without an explicit stipulation on her part not to molest or disturb the inhabitants of the United States of America in taking fish on the Banks of Newfoundland, and other fisheries in the American seas, anywhere, except within the distance of three leagues of the shores of the territories remaining to Great Britain at the close of the war, if a nearer distance cannot be obtained by negotiation. And in the negotiation you are to exert your most strenuous endeavours to obtain a nearer distance in the Gulf of St. Lawrence, and particularly along the shores of Nova Scotia; as to which latter, we are desirous that even

the shores may be occasionally used for the purpose of carrying on the fisheries by the inhabitants of these States."

These instructions—tediously minute and encumbered with repetitions—embody, as will be seen, the substance of Mr. Gerry's resolutions, with this essential difference—that the right to visit and freely use the fishing grounds was to be made an ultimatum to a treaty of commerce instead of a treaty of peace. Strangely enough, these instructions were revoked by Congress in July, 1781, though adopted after mature deliberation and in the spirit of concession. Whatever the motive of Congress, it was not communicated to Mr. Adams by that body, or by the Committee on Foreign Affairs, or by any individual member. Of this he complains with some asperity. In a letter to Robert R. Livingston he states the fact just mentioned, and remarks, that whether the act of neglect "was intended as a punishment to me, or with a charitable design not to lead me into temptation; whether it was intended as a punishment to the English for their insolence and barbarity; whether it was intended to prevent or remove suspicions of allies, or *the envy and green jealousy of co-patriots*, I know not." That then, we finally secured the rights in question, was owing to the zeal of Mr. Adams and his associate commissioners, and not to the firmness or good faith of Congress.

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181 No. 11.—1871, February 9: *Extract from Joint Resolution of the United States Senate and House of Representatives for the protection and preservation of the food-fishes of the coast of the United States.*

Whereas it is asserted that the most valuable food-fishes of the coast and the lakes of the United States are rapidly diminishing in number, to the public injury, and so as materially to affect the interests of trade and commerce: Therefore,

*Be it resolved by the Senate and House of Representatives of the United States of America in Congress assembled*, That the President be, and he hereby is, authorised and required to appoint, by and with the advice and consent of the Senate, from among the civil officers or employés of the Government, one person of proved scientific and practical acquaintance with the fishes of the coast, to be commissioner of fish and fisheries, to serve without additional salary.

Sec. 2. *And be it further resolved*, That it shall be the duty of said commissioner to prosecute investigations and inquiries on the subject, with the view of ascertaining whether any and what diminution in the number of the food-fishes of the coast and the lakes of the United States has taken place; and, if so, to what causes the same is due; and also whether any and what protective, prohibitory, or precautionary measures should be adopted in the premises; and to report upon the same to Congress.

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No. 12.—1872, December 2: *Extract from Report of Professor Spencer F. Baird, of the Smithsonian Institution, the Commissioner appointed pursuant to the foregoing resolution.*

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#### GENERAL SUMMARY OF RESULTS.

The general conclusions at which I have arrived as the result of my investigations of the waters on the south side of New England during 1871 and 1872 may be briefly summed up as follows:

I. The alleged decrease in the number of food-fishes in these waters within the past few years has been fully substantiated.

II. The shore-fishes have been decreasing during the past twenty years, gradually at first, but much more abruptly from about the year 1865, the reduction by the year 1871 being so great as entirely to prevent any successful summer-fishing with the hook and line, and leaving to the traps and pounds the burden of supplying the markets. This statement applies also, but perhaps to a certain extent, to the blue-fish. The decrease in their numbers first manifested itself about ten years ago, and is going on quite rapidly until now.

III. This period of decrease represents the time during which the traps and pounds have been well established, their operations increasing year by year, and their catch, especially in the early spring, being always very great.

IV. In 1871 and 1872 the decrease in the number of fish has been so great as to reduce very largely the profit formerly derived by the traps.

V. The appearance, in 1871, of an unusually large number of young fish spawned in 1870 is a phenomenon only to be explained by the probable escape of a larger number of breeding-fish than usual during the previous season, an abrupt decrease in the ravages of blue-fish and other species, or else by a spontaneous movement northward of newly-hatched fish that ordinarily would have remained on a more southern coast. While these fish will probably, for several years, constitute a marked feature in the fisheries, there is no evidence of the existence of a second crop of young fish corresponding to the one in question.

VI. The decrease of the fish may be considered as due to the combined action of the fish-pounds or weirs and the blue-fish, the former destroying a very large percentage of the spawning fish before they have deposited their eggs, and the latter devouring immense numbers of young fish after they have passed the ordinary perils of immaturity.

VII. There are no measures at our command for destroying the blue-fish, nor would it be desirable to do this, in view of their value as an article of food. The alternative is to regulate the action of the pounds so as to prevent the destruction of fish during the spawning season.

VIII. The quickest remedy would be the absolute abolition of the traps and pounds. This, however, would be a harsh measure, and their proper regulation will probably answer the purpose of restoring

the supply, although a greater number of years will be required. Such regulation may consist either in prohibiting the use of traps or pounds during the entire season of the spawning of the fish, or for a certain number of days in each week during that season.

IX. As the principal profit of the pounds is derived from the catch of fish during the spawning season, it will probably be sufficient to try the experiment of prohibition of the use of nets from Friday night until Monday morning of each week of the spawning season, and after that no restriction need be imposed.

X. It is desirable that the regulation for a close time during 182 each week be passed by the several States; and if this cannot be effected, then the General Government should enact absolute prohibition, or at least during the spawning-season, as it possesses no officers who could exercise the supervision required to enforce the partial closure, or before whom complaints could be entered and the penalty exacted.

XI. Any marked increase in the number of the shore-fishes, resulting from their protection during the spawning-season, will probably tend to restore the blue-fish to their original numbers.

XII. As there is reason to believe that scup, and to a less degree other shore-fishes, as well as blue-fish, have several times disappeared at intervals to a greater or less extent, within the historic period of New England, we cannot be certain that the use of traps and pounds within the last ten years has actually produced the scarcity complained of. The fact, however, that these engines do destroy the spawning fish in so great numbers renders it very probable that they exercise a decided influence. No vested interest or right will suffer by the experiment of regulating the period of their use, as we have attempted to show that a better price will be obtained from a smaller number of fish, by preventing the glutting of the market, and the consequent waste of so perishable an article as fresh fish.

XIII. A feeling of bitterness entertained by the line-fishermen and the general public against traps and pounds, and those who own and profit by them, will in a measure be allayed if the experiment of regulation and restriction be tried, at least for a few years.

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No. 13.—1877: *Extracts from Arguments of Counsel before the Halifax Commission under the Treaty of Washington, 1871.*

*Extract from the Argument of the Honourable Dwight Foster, on behalf of the United States.\**

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When I commenced the investigation of this question I supposed that it was probable that an important question of international law would turn out to be involved in it, relative, of course, to the so-called headland question, which has been the subject of so much discussion between the two governments for a long series of years; but

\* Other extracts from the proceedings and speeches appear in the Appendix to the British Case, pp. 254-267, and in the Appendix to the United States Case, pp. 1109-1115.

the evidence that has been introduced renders this question not of the slightest importance, and inasmuch as it is a question which you are not empowered, except incidentally, to decide, a question eminently proper to be passed upon between the governments directly, I presume you will rejoice with me in finding that it is not practically before us, and that we need not trouble ourselves concerning it. If it had appeared in this case that there was fishing carried on to any appreciable extent within the large bays, more than six miles wide at the headlands, and at a distance of more than three miles from the contour of the shores of those bays, the United States would have contended that their citizens, in common with all the rest of mankind, were entitled to fish in such great bodies of water as long as they kept themselves more than three miles from the shore. In short, they would have contended, as it has been contended, in the brief filed in this case, that where the bays are more than six miles in width from headland to headland, they are to be treated in this respect, for fishing purposes, as parts of the open sea; but the evidence, as I said before, has eliminated all that matter from the inquiry. The only bodies of water as to which any such question can arise are, in the first place, the Bay of Fundy. Now, the right of American fishermen to enter and fish in that bay was decided by arbitration in the case of the schooner *Washington*, and Her Majesty's Government have uniformly acquiesced in that decision. So, as to that body of water, the rights of the citizens of the United States must be regarded as *res adjudicata*. In addition, however, it turns out that within the body of the Bay of Fundy there has not been any fishing more than three miles from the shore for a period of many years. One of the British witnesses said that it was forty years since the mackerel fishery ceased in the Bay of Fundy. At all events, there is no evidence in this case of fishing of any description in the body of the Bay of Fundy more than three miles from the shore, and this fact, in addition to the decision in the *Washington* case, disposes of that.

The next body of water is the Bay of Miramichi; as to which it will turn out by an inspection of the map on which the Commissioners, appointed under the Reciprocity Treaty, marked out the lines reserved from free fishing, on the ground that they were mouths of rivers, that the mouth of the river Miramichi comes almost down to the headlands of the bay. You will remember that the report of the Commission on the Reciprocity Treaty is referred to in the Treaty of Washington, and that the same places excluded by their decision remain excluded now. What is left? The narrow space below the point marked out as the mouth of the river Miramichi, and within the headlands of the bay, is so small that there can be no fishing there of any consequence, and no evidence of any fishing there at all has been introduced. So far as the Bay of Miramichi goes, therefore, I cannot see that the headland question need trouble you at all.

Then comes the Bay of Chaleurs, and in the Bay of Chaleurs whatever fishing has been found to exist seems to have been within three miles of the shores of the bay, in the body of the Bay of Chaleurs. I am not aware of any evidence of fishing, and it is very curious that this Bay of Chaleurs, about which there has been so much controversy heretofore, can be so summarily dismissed from the

183 present investigation. I suppose that a great deal of factitious importance has been given to the Bay of Chaleurs from the custom among fishermen, and almost universal a generation ago, of which we have heard so much, to speak of the whole of the Gulf of St. Lawrence by that term. Over and over again, and particularly among the older witnesses, we have noticed that when they spoke of going to the Gulf of St. Lawrence, they spoke of it by the term "Bay of Chaleurs," but in the Bay of Chaleurs proper, in the body of the bay, I cannot find any evidence of any fishing at all. I think, therefore, that the Bay of Chaleurs may be dismissed from our consideration.

There are two or three other bodies of water as to which a possible theoretical question may be raised, but their names have not been introduced into the testimony on this occasion from first to last. The headland question, therefore, gentlemen, I believe may be dismissed as, for the purpose of this inquiry, wholly unimportant, and although I am not authorized to speak for my friend, the British Agent, and to say that he concurs with me, yet I shall be very much surprised if I find any different views from those that I have expressed taken on the other side. If in argument other views should be brought forward, or if it should seem to your honors, in considering the subject, that the question has an importance which it has not in my view, then I can only refer you to the brief that has been filed, and insist upon the principles which the United States have heretofore maintained on that subject. For the present, I congratulate you, as I do myself, that no grave and vexed question of international law need trouble you in coming to a conclusion.

I think it is necessary to go somewhat, yet briefly, into the historical aspects of the fishery question, in order to see whether that which has been the subject of diplomatic controversy and of public feeling in the past is really the same thing which we have under discussion to day. The question has been asked, and asked with some earnestness, by my friends on the other side, "If the inshore fisheries have the little importance which you say they have, why do your fishermen go to the Gulf of St. Lawrence at all?" And again it has been asked, "If the inshore fisheries are of such insignificant consequence, why is it that the fishermen and people of the United States have always manifested such a feverish anxiety on the subject?" Those questions deserve an answer, and unless an answer can be made, you undoubtedly will feel that there must be some unseen importance in this question, or there would not have been all the trouble with reference to it heretofore. Why do the fishermen of the United States come to the Gulf of St. Lawrence at all? Why should they not come here? What men on the face of the earth have a better right to plow with their keels the waters of the Gulf of St. Lawrence than the descendants of the fishermen of New England, to whose energy and bravery, a century and a quarter ago, it is chiefly owing that there is any Nova Scotia to day under the British flag? I am not going to dwell upon the history of the subject. It is well known that it was New England that saved to the Crown of England these maritime provinces; that to New England fishermen is due the fact that the flag of Great Britain flies on the citadel, and not the flag of France, to day.

Early in the diplomatic history of this case we find that the Treaty of Paris in 1763 excluded French fishermen three leagues from the coast belonging to Great Britain in the Gulf of St. Lawrence and fifteen leagues from the island of Cape Breton. We find that the treaty with Spain in the same year contained a relinquishment of all Spanish fishing rights in the neighborhood of Newfoundland. The Crown of Spain expressly desisted from all pretensions to the right of fishing in the neighborhood of Newfoundland. Those are the two treaties of 1763—the Treaty of Paris with France and the treaty with Spain. Obviously, at that time, Great Britain claimed for herself exclusive sovereignty over the whole Gulf of St. Lawrence and over a large part of the adjacent seas. By the Treaty of Versailles, in 1783, substantially the same provisions of exclusion were made with reference to the French fishermen. Now, in that broad claim of jurisdiction over the adjacent seas, in the right asserted and maintained to have British subjects fish there exclusively, the fishermen of New England, as British subjects, shared. Undoubtedly, the pretensions that were yielded to by those treaties have long since disappeared. Nobody believes now that Great Britain has any exclusive jurisdiction over the Gulf of St. Lawrence or the Banks of Newfoundland, but at the time when the United States asserted their independence and when the treaty was formed between the United States and Great Britain, such were the claims of England, and those claims had been acquiesced in by France and by Spain. That explains the reason why it was that the elder Adams said he would rather cut off his right hand than give up the fisheries at the time the treaty was formed, in 1783, and that explains the reason why, when his son, John Quincy Adams, was one of the Commissioners who negotiated the Treaty of Ghent, at the end of the war of 1812, he insisted so strenuously that nothing should be done to give away the rights of the citizens of the United States in these ocean fisheries. Those are the fisheries which existed in that day, and those alone. The mackerel fishery was unknown. It was the cod-fishery and the whale-fishery that called forth the eulogy of Burke over a hundred years ago. It was the cod-fishery and the whale-fishery for which the first and second Adams so strenuously contended; and, inasmuch as it was found impossible in the treaty at the end of the war of 1812 to come to any adjustment of the fishery question, all mention of it was omitted in the treaty. The treaty was made leaving each party to assert his claims at some future time. And so it stood; Great Britain having given notice that she did not intend to renew the rights and privileges conceded to the United States in the Treaty of 1783, and the United States giving notice that they regarded the privileges of the Treaty of 1783 as of a permanent character, and not terminated by the war of 1812; but no conclusion was arrived at between the parties. What followed? The best account of the controversy to be found is in a book called "The Fisheries and the Mississippi," which contains John Quincy Adams's letters on the subject of the Treaty of Ghent and the convention of 1818.

Mr. Adams in that book says that the year after peace was declared, British cruizers warned all American fishing-vessels not to approach within sixty miles from the coast of Newfoundland, and that it was in consequence of this that the negotiations were begun which led

to the Convention of 1818; and the Convention of 1818, in the opinion of Mr. Adams, conceded to the United States all that they desired.

He believed and asserted that Great Britain had claimed, and  
184 intended to claim, exclusive jurisdiction over the Gulf of St.

Lawrence and over the Banks of Newfoundland, and he considered and stated that the Treaty of 1818, in setting at rest for ever those pretensions, obtained for the United States substantially what they desired. A passage is quoted in the reply of Her Majesty's Government to the United States Answer, from this book, in which Mr. Adams says: "The Newfoundland, Nova Scotia, Gulf of Saint Lawrence and Labrador fisheries, are in nature and in consideration both of their value and of the right to shart in them *one* fishery. To be cut off from the enjoyment of that right would be to the people of Massachusetts similar in kind and comparable in degree with an interdict to the people of Georgia and Louisiana to cultivate cotton or sugar. To be cut off even from that portion of which was within the exclusive British jurisdiction in the *strictest sense* within the Gulf of Saint Lawrence and on the coast of Labrador would have been like an interdict upon the people of Georgia or Louisiana to cultivate cotton or sugar in three-fourths of those respective States." But he goes on to speak of the warning off of American vessels sixty miles from Newfoundland, and then says: "It was this incident which led to the negotiations which terminated in the Convention of the 20th of October, 1818. In that instrument, the United States *renounced forever* that part of the fishing liberties which they had enjoyed or claimed in certain parts of the exclusive jurisdiction of the British Provinces, and within *three marine miles* of the shores. *This privilege, without being of much use to our fishermen*, had been found very inconvenient to the British; and in return, we have acquired an enlarged liberty, both of fishing and drying fish, within other parts of the British jurisdiction forever."

Fishing for mackerel in ten fathoms of water off the bight of Prince Edward Island was not the thing then taken into consideration. There was no mackerel fishery till many years after. This controversy was caused by a claim on the one hand and a resistance on the other with reference to the ocean fisheries, to the cod fishery, the whale fishery, the deep-sea fishery, three leagues, fifteen leagues, sixty miles from the shore; and after the Convention of 1818 had been formed, if it had been construed as the British Government construe it to-day, there would have been no more controversy on the subject.

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In the first place, I suppose I may as well take up the case of Newfoundland. The case of Newfoundland, as I understand it, is almost entirely eliminated from this controversy by the decision which was made on the 6th of September. The claim as presented in Her Majesty's Case, is not one of compensation for fishing within the territorial waters of Newfoundland, but it is one of enjoying the privileges of commercial intercourse with the people of that island. Of territorial fishing in Newfoundland waters, there is hardly any evidence to be found since the first day of July, 1873, when the fishery clauses of the Treaty of Washington took effect, with one exception, that I will allude to hereafter. There is certainly no cod-fishing done by our people in the territorial waters of Newfoundland; none has been



proved, and there is no probability that there ever will be during the period of the treaty or afterward. The American cod fishery is everywhere deep sea fishing. There is a little evidence of two localities in which a few halibut are said to have been taken in Newfoundland waters—one near Hermitage Bay, and one near Fortune Bay. But the same evidence that shows that it once existed shows that it had been exhausted and abandoned before the Treaty of Washington was made. Judge Bennet testified that—

The halibut-fishing on the Newfoundland coast is a very limited one, so far as I am aware. It is limited to the waters between Brunet Island in Fortune Bay and Pass Island in Hermitage Bay. It is conducted close inshore, and was a very prolific fishery for a number of years. Our local fishermen pursued it with hook and line. I think about eight years ago the Americans visited that place for the purpose of fishing, and they fished it very thoroughly. They fished early in the season, in the month of April, when halibut was in great demand in New York market. They carried them there fresh in ice, and I know they have pursued that fishery from that time to within the last few years. I believe they have about exhausted it now.

Another witness testified that some years ago the halibut fishery was pursued in that vicinity, but he went on to say that—

American fishermen do not now fish for halibut about Pass Island as they formerly did, because I believe that that fishery has been exhausted by the Americans. I know of no United States fishing-vessels fishing within three miles of the shore, except at and about Pass Island, as already stated.—(Affidavit of Philip Hubert, p. 54, British Affidavits.)

John Evans, p. 52, British Affidavits, says:

The halibut fishery, followed by the United States fishing-vessels about Pass Island, has been abandoned during late years. I have not heard of American fishing-vessels trying to catch fish on the Newfoundland inshore-fishery.

There has been a little evidence that occasionally, when our vessels go into harbors to purchase bait at night, some of the men will jig a few squid, when they are waiting to obtain bait.

All the evidence shows that they go there not to fish for bait, but to buy it. It shows also that when they are there for that purpose the crews of the vessels are so much occupied in taking on board and stowing away the fish bought for bait that they have no time to engage much in fishing; but one or two witnesses have spoken of a little jigging for squid by one or two men when unoccupied at night. As to the rest, all the fishing in the territorial waters of Newfoundland is done by the inhabitants themselves.

The frozen-herring trade, which was the ground of compensation chiefly relied upon in the Newfoundland case, has been completely proved to be a commercial transaction. The concurrent  
185 testimony of the witnesses on both sides is, that American fishermen go there with money, they do not go there provided with the appliances for fishing, but with money and with goods. They go there to purchase and to trade, and when they leave Gloucester, they take out a permit to touch and trade, that they may have the privileges of trading-vessels. Perhaps it may be said that the arrangement under which this bait is taken is substantially a fishing for it.

I have heard that suggestion hinted at in the course of our discussions, but plainly, it seems to me, it cannot be sound. We pay for herring by the barrel, for squid and caplin by the hundred, and the inhabitants of the island will go out to sea as far as to the French Islands, there to meet American schooners, and to induce them to

come to their particular localities that they may be the ones to catch the bait for them. It is true that the British Case expresses the apprehension that the frozen-herring trade may be lost to the inhabitants of Newfoundland in consequence of the provisions of the treaty. It is said that "it is not at all probable that, possessing the right to take herring and caplin for themselves on all parts of the Newfoundland coast, the United States fishermen will continue to purchase bait as heretofore, and they will thus prevent the local fishermen, especially those of Fortune Bay, from engaging in a very lucrative employment, which formerly occupied them during a portion of the winter season, for the supply of the United States market." One of the British witnesses, Joseph Tierney, whose testimony is on page 371, in speaking of this matter of getting bait, says, in reply to the question, "How do you get that bait?" "Buy it from persons that go and catch it and sell it for so much a barrel. The American fishermen are not allowed to catch their own bait at all. Of course, they may jig their own squid around the vessel." And in reply to my question, "What would be done if they tried to catch bait?" the answer is, "They are pretty rough customers. I don't know what they would do." So it appears that American fishermen not only do not catch bait, but are not allowed to catch it. They buy the bait, and that, to my mind, is the end of the question. So far as the herring trade goes, we could not, if we were disposed to, carry it on successfully under the provisions of the treaty, for this herring trade is substantially a seining from shore—a strand fishing, as it is called—and we have no right anywhere conferred by this treaty to go ashore and seine herring any more than we have to establish fish-traps. I remember brother Thomson and Professor Baird were at issue on the question whether we had a right to do this. Brother Thomson was clearly right and Professor Baird was mistaken. We have not acquired any right under the treaty to go ashore for any purpose anywhere on the British territories except to dry nets and cure fish. I do not think that I ought to spend more time over the case of Newfoundland than this, except to call your attention to the circumstance that, in return for these few squid jigged at night, the islanders obtain an annual remission of duties averaging upwards of \$50,000 a year.

We have been kindly furnished, in connection with the British affidavits upon page 128, Appendix A, with a statement showing the duties remitted upon exports from Newfoundland to the United States since the Treaty of Washington, and their annual average is made out to be \$50,940.45. I submit to the Commission whether we do not pay, upon any view of political economy, a thousand fold for all the squid that our people jig after dark.

Let it not, however, for a moment be supposed that because I took up the case of Newfoundland for convenience' sake, as it is presented separately, that I regard it as a distinct part of the case. The United States has made no treaty with the Island of Newfoundland, which has not yet hoisted the flag of the "Lone Star." When she does, perhaps we shall be happy to enter into treaty relations with her; but we know at present only Her Majesty's Government. We are dealing with the whole aggregate of concessions, from the one side to the other, and Newfoundland comes in with the rest.

Leaving, then, the Island of Newfoundland, I come to the question of the value to the citizens of the United States of the concessions as to inshore fisheries in the territorial waters of the Dominion of Canada—that is within three miles of the shore—for the five annual seasons past, and for seven years to come. In the first place, there is the right conceded to our fishermen to land in order to cure fish and dry nets—to land on unoccupied places, where they do not interfere with private property, nor with British fishermen exercising the same rights. In one of the oldest law reports, Popham's an ancient sage of the law, Mr. Justice Doddridge remarks: "Fishermen, by the law of nations, may dry their nets on the land of any man." Without asserting that as a correct rule of law, I think I may safely assert that it has been the practice permitted under the comity of nations from the beginning of human history, and that no nation or people, no kingdom or country, has ever excluded fishermen from landing on barren and unoccupied shores and rocks to dry their nets and cure their fish. If it was proved that the fishermen of the United States did use privileges of this kind, under the provisions of the Treaty of Washington, to a greater extent than before, I hardly think that you would be able to find a current coin of the realm sufficiently small in which to estimate compensation for such a concession. But, in point of fact, the thing is not done; there is no evidence that it is done. On the contrary, the evidence is that this practice belonged to the primitive usages of a by-gone generation. Seventy, sixty, perhaps fifty years ago, when a little fishing vessel left Massachusetts Bay, it would sail to Newfoundland, and after catching a few fish, the skipper would moor his craft near the shore, land in a boat, and dry the fish on the rocks; and when he had collected a fare of fish, and filled his vessel, he would either return back home, or quite as frequently would sail, on a commercial voyage to some foreign country, where he would dispose of the fish and take in a return cargo. But nothing of that sort has happened within the memory of any living man. It is something wholly disused, of no value whatever. And it must not be said that under this concession we acquire any right to fish from the shore, to haul nets from the shore, or to fish from rocks. Obviously, we do not. I agree entirely with the view of my brother Thomson, as manifested in his conversation with Professor Baird on that subject.

We come, then, to the inshore fishing. What is that? In the first place, there has been some attempt to show inshore halibut-fishing in the neighborhood of Cape Sable. It is very slight. It is contradicted by all our witnesses. No American fisherman  
 186 can be found who has ever known of any halibut-fishing within three miles of the shore in that vicinity; and our fishermen all say that it is impossible that there should be halibut caught in any considerable quantities in any place where the waters are so shallow. There is also some evidence that up in the Gulf of St. Lawrence there was once a small local halibut fishery, but the same evidence that speaks of its existence there speaks of its discontinuance years ago. The last instance of a vessel going there to fish for halibut that has been made known to us is the one that Mr. Sylvanus Smith testifies about, where a vessel of his strayed up into the gulf, was captured, and was released, prior to the Treaty of Washington. As to the inshore halibut fishery, there has been no name of a vessel,

except in one single instance, when a witness did give the name of the Sarah C. Pyle as a vessel that had fished for halibut in the vicinity of Cape Sable. We have an affidavit from the captain of that schooner, Benjamin Swim, saying that he did not take any fish within many miles of Cape Sable. He says he has been engaged in cod-fishing since April of this year, and "has landed 150,000 pounds of halibut, and caught them all, both codfish and halibut, on Western Banks. The nearest to the shore that I have caught fish of any kind this year is, at least, 40 miles."—(Affidavit No. 242.)

So much for the inshore halibut fishery. I will, however, before leaving it, refer to the statement of one British witness, Thomas R. Pattilo, who testified that occasionally halibut may be caught inshore, as a boy may catch a codfish off the rocks; but, pursued as a business, halibut are caught in the sea, in deep water. "How deep do you say?" "The fishing is most successfully prosecuted in about 90 fathoms of water, and, later in the season, in as much as 150 fathoms."

So much for the inshore halibut fishery; and that brings me to the inshore cod fishery, as to which I am reminded of a chapter in an old history of Ireland that was entitled "On Snakes in Ireland", and the whole chapter was "There are no Snakes in Ireland." So there is no inshore cod fishery pursued as a business by United States vessels anywhere. It is, like halibut-fishing, exclusively a deep-sea fishing. They caught a whale the other day in the harbor of Charlottetown, but I do not suppose our friends expect you to assess in this award against the United States any particular sum for the inshore whale fishery. There is no cod fishery or halibut fishery inshore, pursued by our vessels, any more than there is inshore whale fishery. We know and our witnesses know where our vessels go. If they go near the British shores at all they go to buy bait, and leave their money in payment for the bait. Will it be said that the cod fishery is indirectly to be paid for, because fresh bait must be used, and the cod fishery cannot profitably be pursued without fresh bait; and because we are hereafter to be deprived of the right to buy bait by laws expected to be passed, and then shall have to stop and catch it, so that by and by, when some new statutes have been enacted, and we have been cut off from commercial privileges, we may be forced to catch bait for cod-fishing in British territorial waters? I think it will be time enough to meet that question when it arises. Any attempt to cut us off from the commercial privileges that are allowed in times of peace by the comity of civilized nations to all at peace with them, would of course be adjusted between the two governments in the spirit that becomes two imperial and Christian powers. I do not think that, looking forward to some unknown time when some unknown law will be passed, we need anticipate that we are to be cut off from the privilege of buying bait, and therefore you should award compensation against us for the bait which we may at that time find occasion ourselves to catch. But if it is worth while to spend a single moment upon that, how thoroughly it has been disposed of by the evidence, which shows that this practice of going from the fishing grounds on the Banks into harbors to purchase bait is one attended with great loss of time, and with other incidental disadvantages, so that the owners of the vessels much prefer to have their fishermen stay on the

Banks and use salt bait, and whatever else they can get there. Saint Pierre and Miquelon are free ports; commercial intercourse is permitted there; bait can be bought there; and, as the British witnesses have told us, the traffic for bait between Newfoundland and the French Islands is so great, and such a full supply of bait is brought to the French Islands, more than there is a demand for, that it is sometimes thrown overboard in quantities that almost fill up the harbor. That was the statement of one of the witnesses. I do not think, therefore, that I need spend more time, either upon the cod-fishery, or the question of buying bait or procuring bait for cod-fishing.

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Is there any prospect whatever that the mackerel fishery for American vessels in the Gulf of St. Lawrence will ever become prosperous? In order that it should do so, there must concur three things, of no one of which is there any present probability. In the first place, there must be much poorer fishing off the coasts of the United States than usual, for as things have been there for some years past, until the present year, the fishing for mackerel was so much more profitable than it had ever been in the Gulf of St. Lawrence that there was no temptation for our vessels to desert our own shores; and off the shores of the United States seining can be pursued, which never has been successfully followed in the gulf. Seining mackerel is about the only really profitable mode of taking the fish, as a business out of which money can be made to any considerable amount. The days for hook-and-line fishing have passed away, and seining is the method by which the fish must be taken if money is to be made. That has never yet been done, and is not likely to be done, in the gulf. The bottom is too rough; the water is too shallow. The expedient that we were told at the beginning of the hearing had been adopted turns out to be impracticable, for shallow seines alarm and frighten away the fish. The seines are not made shallow to accommodate themselves to the waters of the gulf. Year by year they are made longer and deeper, that a school of fish may be more successfully enveloped by them. Then there must also be much better fishing in the gulf than has existed for several years past. It has been going down in value every year since the treaty went into effect. It has got down to an average by the Port Mulgrave returns (I mean by the portion of the returns which we have) of 125 barrels a vessel this year, and, according to the verbal statement of the collector of Port Mulgrave, 108 barrels is quite up to the average. If any one takes the trouble to go through the returns we have put into the case and analyze them, it will appear that 108 barrels is quite as large as the average this year. Some vessels have come out of the gulf

187 with nothing at all, and some with hardly anything at all. In the next place, in order to induce American vessels to go for mackerel to the Gulf of St. Lawrence in any considerable numbers, mackerel must have an active market at remunerative prices. There must be a different state of things in the United States in that respect from what has existed for many years past, for, by all accounts, the demand has been declining and the consumption has been diminishing for ten years past.

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[The Argument of Mr. Trescott, on behalf of the United States, contained the following]:—

With regard to the history of these treaties, there are two subjects in that connection which I do not propose to discuss at all. One is the headland question. I consider that the statement made by my distinguished colleague who preceded me has really taken that question out of this discussion. I do not understand that there is any claim made here that any portion of this award is to be assessed for the privilege of coming within the headlands. As to the exceedingly interesting and very able brief, submitted for the other side, I am not disposed to quarrel with it. At any rate, I shall not undertake to go into any argument upon it. It refers entirely to the question of territorial right, and the question of extent of jurisdiction—questions with which the United States has nothing to do. They have never been raised by our government, and probably never will be, because our claim to fish within the three-mile limit is no more an interference with territorial and jurisdictional rights of Great Britain than a right of way through a park would be an interference with the ownership of the property, or a right to cut timber in a forest would be an interference with the fee-simple in the soil.

Mr. THOMSON. Do you mean to say there would be no interference there?

Mr. FOSTER. Certainly not. It would be simply a servitude. You do not mean to say that my right to go through your farm interferes with the fee-simple of the property?

Mr. THOMSON. It does not take away the fee-simple, but it interferes with my enjoyment of the property.

Mr. TRESCOTT. That is another question, because compensation may be found and given. I simply say that it does not interfere with the territorial or jurisdiction right. That is the view I take of it, at any rate, and I think I can sustain it, if it ever becomes necessary.

I come now to the questions which that Treaty of 1871 raises, and they are simply these: What is the difference in value gained by us and the advantages gained by you; that is to say, what is the difference in value between the right to fish within the three-mile limit, on one side, and the right to fish on the United States shores, on the other, coupled with the right to send fish and fish-oil to the United States market free of duty.

With regard to the fisheries. The fisheries with which the Treaty of 1871 is concerned are the cod, the herring, the mackerel, and hake, the haddock, and halibut fisheries, within the three-mile limit. For the purposes of this argument, there will be, I think, a general agreement that we can dismiss the hake, haddock, and halibut fisheries. It is admitted, also, that the cod fishery is essentially a deep-sea fishery, and does not, therefore, come within the scope of your examination, especially as the question of bait and supplies, which alone connected it with this discussion, has been eliminated by your former decision.

We have left, then, only the herring fishery and the mackerel fishery. As to the herring fishery, I shall say but very few words. The herring fishery on the shores of the Magdalen Islands we claim of right—a few scattering catches elsewhere are not appreciable enough to talk about; and we have, therefore, only the herring fisheries of Newfoundland and Grand Manan. The former is essentially a frozen-herring business, and I do not believe there exists a question that this business, both at Newfoundland and Grand Manan, is entirely a mercantile business, a commercial transaction, a buying and selling, not a fishing. The testimony on this subject is complete, and is confirmed by Mr. Babson, the collector of the port of Gloucester, who has told you that the Gloucester fleet, the largest factors in this business, take out licenses to touch and trade, when they go for frozen herrings, thus establishing the character of their mercantile voyage.

The only open question, then, as to the herring fishery, is the fishery for smoked and pickled herring at Grand Manan, and in the Bay of Fundy, from Latite to Lepreaux, and whether that is conducted by United States fishermen within the three-mile limit; a question, it seems to me, very much narrowed when you come to consider that from Eastport, in Maine, to Campobello is only a mile and a half, and from Eastport to Grand Manan is only six or seven miles.

And now as to the mackerel fishery. There are two singular facts connected with it. The first is, that valuable as it is represented to be, lying, as it is claimed to do, within an almost closed sea, the mackerel fishery of the gulf has been until within a few years the industry of strangers. It has not attracted native capital, it has not stimulated native enterprise, it has not developed native ports and harbors, while you claim and complain that it has built up Gloucester into established wealth and prosperity, and supplies, to a large degree, a great food market of the United States. I find the following remarks in a report of Commander Cochran to Vice-Admiral Seymour in 1851:

"The curious circumstance that about one thousand sail of American schooners find it very remunerative to pursue the herring and mackerel fisheries on the shores of our northern provinces, while the inhabitants scarcely 188 take any, does indeed appear strange, and apparently is to be accounted for by the fact that the colonists are wanting in capital and energy. The Jersey merchants, who may be said to possess the whole labour market, do not turn their attention to these branches. The business of the Jersey houses is generally, I believe, with one exception, carried on by agents; these persons receive instructions from their employers to devote their whole time and energy to the catching and curing of cod. Such constant attention to one subject appears at least to engender a perfect apathy respecting other branches of their trade. They are all aware, I believe fully aware, of the advantages to be derived from catching the herring and mackerel, when these come in shoals within a few yards of their doors, but still nothing is done.

"Commercial relations of long standing, never having engaged in the trade before, possible want of the knowledge of the markets, and the alleged want of skill among the fishermen of the method of catching and curing of these fish, together with the twenty per cent. duty on English fish in America, may tend to induce the Jersey houses not to enter into these branches. Added to all these reasons the capital of the principals is, I am informed, in most instances small. It will probably be difficult to find about the Bay of Chaleurs and Gaspé any fishermen not engaged by some one of the numerous Jersey houses, and it may be said that a new branch of industry would much interfere with the cod-fishery, but so lucrative a trade as the herring and mackerel one would prove would enable higher wages to be given than are done for cod. In fact, I believe that very small, if any, wages are given at all, the money due to the fisherman for his summer labor being absorbed in food and clothing for himself and family, repairs of boats and fishing-gear, almost always deeply in debt in the spring, or at any rate sufficiently so to insure his labor for the ensuing summer, and so more persons would be induced to resort here the summer season.—(Confidential Official Correspondence, pp. 4 and 5.)"

This is precisely the testimony of the Gaspé witnesses who were put upon the stand. The great Jersey houses, which do represent the capital, enterprise, experience, and skill of the country, do not touch the mackerel fisheries. As they did a quarter of a century ago, so they do to-day; they abandon, neglect utterly what has been called the California of the coast, and make and maintain their fortunes by giving up mackerel-fishing and confining their attention exclusively to cod-fishing.

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[The argument of Mr. Richard H. Dana, on behalf of the United States, contained the following]:—

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Your honors will also observe that until 1830 the mackerel fisheries were unknown. There was no fishery but the cod fishery. The cod fisheries were all the parties had in mind in making the Treaty of 1818, and to this day, as you have observed from some of the witnesses, "Fishing," by the common speech of Gloucester, fishing means, *ex vi termini* cod-fishing is one thing and "mackereling" is another. In Mr. Adams's pamphlet, on the 23rd page, he speaks of it as a "fishery," or in other words, cod fishery, and in 1818 the question was of the right of England to exclude.

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Great changes took place in that time. The mackerel fishery rose into importance. Your honors have had before you the interesting spectacle of an old

man who thinks that he was the first man who went from Massachusetts into this gulf and fished for mackerel, in 1827, or thereabouts. He probably was. But mackerel fishing did not become a trade or business until considerably after 1830, and the catch of mackerel became important to us as well as to the colonies.

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What, then, is the money-value of the removal of the restriction? On the subject of Newfoundland, which I desire to treat with great respect, because of the size of the island and its numerous bays, and because of my respect and affection for the gentleman who represents the semi-sovereignty before this tribunal, there is an article in the *Revue des Deux Mondes* of November, 1874, on the value of Newfoundland and its fisheries to France, of extreme interest, from which I would like to quote largely. It seems to me to be exhaustive. It gives the whole history and present condition of these fisheries, and among other things, it shows that in attempting to grant us a right there, Great Britain made us overlap very much the rights of the French; and that if we should undertake to carry into effect some of the rights given us by the treaty of 1871, we might have the republic, or monarchy, or empire, or whatever it may be, on the other side of the water, to settle the question with as well as this tribunal. I suppose this tribunal is satisfied that we do not catch cod within three miles of Newfoundland; that we do not catch even our bait there, but that we buy it. Finding that we had proved a complete case, that we bought our bait there, the very keen argument was made by the counsel on the other side, that though we bought our bait, we must be held to have caught it. "*Qui facit per alium, facit per se*," says the counsel; and so, if you buy a thing of a man and he sends a boy out to get it, the boy is your messenger, not his; and you have not bought it of him, but of the person to whom he sends for it. This is a homely illustration, but it is perfectly plain. When a fisherman comes and says, "I will sell my fish at so much a pound," and has not got them, but goes off and catches them, and I pay him that price, I buy the fish of him, do I not? What is it but a mere illusion, a mere deception, a mere fallacy to say, that because I knew that he had not the fish on hand at the time and is going off to get it, though I agree to buy it of him at a fixed rate, and I am not going to pay him for his services, but for the fish when delivered, that I am fishing through him and not buying of him? It is very hard to argue a perfectly clear case, and one that has but one side to it. Nothing but stress of law, or stress of facts, or stress of politics, could possibly have caused so much intelligence to be perverted upon this subject into an attempt to show that we were the catchers of the Newfoundland bait.

189 I will now take up for a moment the question of the cod fisheries, and I know that, whatever I may have been thus far, I shall be somewhat tedious here in the course which I am about to pursue; but I do not wish it to be said on the other side, and my instructions are not to leave it to be said, that we have asserted and stopped at assertions, however certain we may be that our assertions are well-founded, and even that they have the approbation of the court. I shall endeavor to refer to the evidence, without reading much of it, on the principal points which I have so far assumed, and would be quite authorised in assuming.

In the first place, as to the cod fishery, it is a deep-sea fishery not a fishery within three miles. I do not mean to say that a stray cod may not be caught occasionally within that limit; but as a business, it is a deep-sea business. With your honors' permission I will read some of the evidence on that point.

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The bait of the codfish need not be caught within the three-mile line. That, I think, we have pretty well established. I referred just now to their argument, that we caught whatever we bought, but that I certainly may pass by. We may buy it when we wish it, but we need not have it. Your honors recollect the testimony of our witnesses from Provincetown, as well as those from Gloucester, who said that they believed it was more for the interest of all concerned that the cod fishery should be carried on with bait kept in ice as long as it can be, and salted bait—with fish, and bait, and liver, and everything else that can be carried out and kept there, and what birds and fish can be caught on the Banks, and the vessels stick to their business. The testimony was uniform; there was not one who failed to join in the expression of opinion, that that course was far better for the mercantile purposes of our community, than that our fishermen should run inshore and buy the bait. But if they did go inshore and buy the



bait, it would be a question entirely beyond your honor's consideration. We have a right to buy it where we please, even here, and we certainly need not catch it.

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I now call your attention to mackerel. It is a word that we have heard before. It is a word that we have become familiar with, and one which I hope we shall not view with disgust or distaste for its frequency when we shall have left this hospitable coast, and scattered ourselves to our far distant homes.

The mackerel, may it please your honors, is a deep-sea fish. He does not lurk about anybody's premises. He does not live close into the shore. He is a fish to whose existence and to whose movements a mysterious importance is attached. A certain season of the year he is not to be seen, and at other times they are so thick upon the waters that, as one of the most moderate of the British witnesses said, you might walk upon them with snow-shoes, I believe it was from East Point to North Cape. I do not know that I have got the geography quite right, but it is something like that.

Mr. THOMPSON. You are only sixty miles out of the way.

Mr. DANA. Well, that is not very far for such tales as these. Still, the story is as improbable with the limitation that my learned friend puts on it as it was in the way I put it. However, I do not doubt that the number is extraordinary at times, and at other times they are not to be seen. We do not know much about them. We know they disappear from the waters of our whole coast, from Labrador down to the extreme southerly coast, and then at the early opening of the spring they reappear in great numbers, armies of them. They can no more be counted than the sand of the sea, and are as little likely to be diminished in number. They come from the deep sea, or deep mud, and they reappear in these vast masses, and for a few months they spread themselves all over these seas. A few of them are caught, but very few in proportion to the whole number, and then they recede again. Their power of multiplication is very great indeed. I forget what Professor Baird told us, but it is very great indeed. Methods have been taken to preserve their spawn, that it may be secured against the peril of destruction by other fish and the perils of the sea. They are specially to be found upon the banks of the Gulf of St. Lawrence, the Bradelle or Bradley Banks, the Orphan, Miscou, Green, Fisherman's Bank, and off the coast of Prince Edward Island, and especially, more than anywhere else, about the Magdalen Islands; and in the autumn, as they are passing down to their uncertain and unknown homes, they are to be found in great numbers directly off the western coast of Cape Breton, near the highlands opposite the group of Margaree Islands, and near Port Hood; but in the main they are not to be found all over the deep sea of the Gulf of St. Lawrence. The Gulf of St. Lawrence is full of ledges, banks, and eddies formed by meeting tides, which Professor Hind described to us, and there the mackerel are especially gathered together. The map drawn on the British side, in the British interest, shows this enormous field for the mackerel fisheries, and though very few comparatively of the banks and ledges are put down, yet, in looking over this map, it seems as if it was a sort of great directory showing the abodes of the mackerel, and also the courses that the mackerel take in passing from one part of this great sea to another. There is hardly a place where mackerel-fishing-grounds are not marked out here, and they are nearly all marked out at a considerable distance from the shore, all around the Magdalen Islands, for many miles, and at a distance from Prince Edward Island and on the various

banks, ledges, and shoals that are to be found; and it is there, as I shall have the honor to point out to the court more particularly hereafter, that they have always been caught in the largest quantities, and the best of them, by American fishermen.

There are one or two experienced witnesses from Gloucester who have dealt with the subject carefully for their own interests, not testifying for any particular purpose, but having kept their books and accounts and dealt with the mackerel in their own business, whose words I would like to recall to the attention of the court for a few moments.

Captain Maddocks, of Gloucester, on page 135 of the American Evidence, testifies as follows:

From my experience my judgment leads me to think that our vessels would get full as many, if not more, by staying outside of the three-mile range altogether. By going inshore *they may sometimes get a spurt of* 190 *mackerel*, but they are then liable to go farther into the harbors and lose a good deal of time; whereas if they would fish farther off they would save a good deal of time. I think that for ten or twenty years back they might have caught, well, somewhere from a tenth to a fifteenth part of the mackerel within the three-mile range. I don't know but they have. I don't think anything more than a tenth part certainly.

Joseph O. Proctor, of Gloucester, on page 196, says:

From the best of my judgment, the knowledge I have where my vessels have been, and conversation with the masters of the vessels, I believe that not one-eighth of the mackerel have been caught within; I should say less, and I should not say more. It is nearer a tenth than an eighth.

Q. Do you know where the bulk is caught?—A. At the Magdalenes, or between the Magdalenes and Cheticamp.

Capt. Ezra Turner, of Gloucester, page 226, testifies:

Q. Have you ever fished off Prince Edward Island?—A. Yes; I have fished all around the east side, wherever anybody fished.

Q. Did you fish within three miles of the shore there?—A. No; it is a rare thing that ever you get mackerel within the three miles. When they come within three miles they rise in schools, and we never calculate to do much out of them; but from four to six and seven miles off is the common fishing-ground there.

The Commissioners will recollect the testimony of Mr. Myrick, an American merchant, who had established himself on Prince Edward Island. The inshore fishery, he said, is not suited to American vessels. Our vessels are large; they are built at a distance; they are manned by sixteen or seventeen men; they cost a great deal; they require large catches, and dealing with fish in large quantities; they deal at wholesale altogether, and not at retail. Retailing would ruin them. Anything short of large catches, large amounts would be their end, and compel all the merchants to give up the business, or to take to boat-fishing, which, of course, Gloucester, or Massachusetts, or New England, or any part of the United States could not undertake to carry on here. It has been stated to the tribunal, by experienced men, as you cannot but remember, that our fishermen object to going very near shore in the Gulf of St. Lawrence. There are perils of weather connected with the coast which cannot be set aside by ridicule. Gloucester is a town full of widows and orphans, whose husbands and parents have laid their bones upon this coast, and upon its rocks and reefs trusting too much to the appearance of fine weather, as we all did last night, waking up this morning in a tem-

pest. Gloucester has tried to provide for these bereft people, by every fisherman voluntarily paying a small percentage of his earnings to constitute a widow's and orphans' fund. Even the tempestuous Magdalene Islands are safer for vessels than are the inshore coasts of those islands, where we are now permitted to fish; their harbors are poor, their entrances are shallowed by sand-bars, which are shifting, which shift with every very high wind, and sometimes with the season. They are well enough after you get inside them, but they are dangerous to enter to persons inexperienced, dangerous to any by night; and if a vessel is caught near the shore by a wind blowing inshore, against which she cannot beat with sails, for none of them carry steam, then she is in immediate peril. They therefore give a wide berth to the inshore fisheries in the main. They resort to them only occasionally. They are not useful for fishing with our seines. We find that the purse-seines are too deep; that they are cut by the ground, which is rocky; that it is impossible to shorten them without scaring the mackerel, which must be taken by seines run out a great distance, for they are very quick of sight, and very suspicious of man; and they soon find their way out of the seines, unless they are laid a considerable distance off.

We need not catch our mackerel bait, any more than our cod bait, within the three-mile limit. On the contrary, the best mackerel bait in the world is the menhaden, which we bring from New England. All admit that. The British witnesses say they would use it were it not that it is too costly. They have to buy it from American vessels; and they betake themselves to an inferior kind of bait when they cannot afford to buy the best bait from us. And another result is that the Americans have shown for many years that what are called the shore mackerel, that is, those that are caught off the coast of Massachusetts and several other of the New England States, are really better than the bay mackerel. The evidence of that is the market prices they bring. It is not a matter of opinion. We have not called as witnesses persons who have only tasted them, and might have prejudices or peculiar tastes, but we have shown the market value.

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It was not until about the year 1830 that this great change in the fisheries themselves came in, when they ceased to be exclusively cod fisheries, and became mainly mackerel fisheries. Then the importance of landing upon the shores to dry our nets and cure our fish was reduced to nothing; I mean practically nothing. We put it in the Treaty of 1871, but it has never been proved that we made any use of that liberty or power.

The advent of the mackerel—one of those strange mutations which seem to govern those mysterious creatures of the sea—the advent of the mackerel to this region, and to Massachusetts Bay, put a new countenance upon all this matter. It undoubtedly gave an advantage to the British side, and put us at once to somewhat of a disadvantage. Then came the demand of the islanders and of the people of the Dominion, and others, to carry into effect this exclusive system, to drive our fishermen off, not only from the three-mile line, as we understand it, but from the three-mile line as any captain of a cruiser chose to understand it. Nobody knew what the three-mile line was.

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191 [The Argument of Mr. Whiteway, on behalf of Great Britain, contained the following:—]

And now, one word with regard to the winter herring fishery in Fortune Bay. It appears that from 40 to 50 United States vessels proceed there between the months of November and February, taking from thence cargoes of frozen herring of from 500 or 800 or 1,000 barrels. On this point, I would refer you to the affidavits by Mr. Hickman, Mr. Giovanninni, Mr. Hubert, and others, pages 53, 57, and 59 of British Affidavits. According to the evidence these herrings have hitherto generally been obtained by purchase. The trade is evidently increasing, as it seems that during the present year one vessel loaded 6,500 barrels. Mr. Pattillo, a United States witness, appreciated the right to catch so highly that he risked the confiscation of his vessel rather than abandon his determination to catch a cargo for himself. It is hardly possible, then, to conceive that the Americans will continue to buy, possessing, as they now do, the right to catch.

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[The Argument of Mr. Thomson (on behalf of Great Britain) contained the following:—]

A despatch dated September 9, 1853, was as follows:—

(No. 23.)

PRINCETON, AT PORTSMOUTH, N. H.,

September 19, 1853.

SIR: My dispatches from the 1st to the 14th, inclusive, have informed the department of the movements of this ship up to the 16th of August.

After leaving Halifax, I ran along the coast of Nova Scotia to the Strait of Canso, which I entered on the evening of the 17th, and anchored at Sand Point. On the next day I anchored successively at Pilot Cove and Ship Harbor. At each of these places diligent inquiry was made of the masters of American vessels, and, at the last, of our consular agent, in relation to the treatment of our fishing vessels by the armed vessels of other nations, and no instance was learned of any improper interference. Some cases were reported of vessels having been warned off who were found fishing or loitering within three miles of the shores.

It was thought advisable to make particular inquiry in this strait, as it is the passage through which great numbers of vessels pass, and where wood, water, and other supplies are obtained; and although there were not many Americans in it at the time of our visit, I was informed by the consular agent that in the course of the last year eleven thousand vessels, of all kinds, were counted passing through both ways, and some must have passed in the night who were not counted.

From the Strait of Canso I went to Pictou. This port is the residence of the consul of the United States for the north coast of Nova Scotia, to whom complaints of interference would naturally be made, if any should be experienced within the limits of his consulate; but he had heard of none.

From Pictou I crossed over to Charlottetown, Prince Edward Island, and inquired into the case of the schooner Starlight seized by Her Majesty's steamer Devastation; the official papers in relation to which were forwarded with my dispatch, No. 15.

The Fulton having joined me at Pictou, accompanied me to Charlottetown, that some slight repairs might be made to her machinery, under the direction of Chief-Engineer Shock. She was dispatched on the evening of the 29th August, under instructions; copies of which accompany this.

Leaving Charlottetown, it was found necessary to anchor in the outer harbor of Georgetown in order to make some repairs to the engine of the Princeton—the necessity of which was not discovered until after we had left Charlottetown, but which, fortunately, could be done by our own engineers.

On the 2d September, at meridian, we anchored in Gaspé Bay, Lower Canada, having, in the course of the night and morning, passed through many hundreds of fishing-vessels, showing generally American colors. These were all fishing outside the bays. The shipped passed slowly through them, with her colors set, but it was deemed best not to interrupt them in their fishing by boarding or running so near as to hail. If any one of them had complaint to make, communication could be easily had with the ship, and the slightest intimation of such a wish would have been immediately attended to, but none was made.

The *Fulton* was at anchor in the inner harbor. A copy of Lieutenant-Commanding Watson's report of his proceedings, under my orders of the 29th ultimo, is with this.

Soon after I anchored at Gaspé I was informed that the anchorage, which I had taken by advice of my pilot, was unsafe if it should blow a gale from the east—of frequent occurrence at this season. No pilot could be found to take so large a ship into the inner harbor, and, as night was approaching, I got under way and put to sea with both vessels. It had now become necessary to replenish our coal, and I determined to go to Sydney, in Cape Breton Island, for that purpose.

I arrived at Sydney on the 4th, the *Fulton* in company, and, after taking on board a supply of coal for each vessel, put to sea again on the morning of the 9th.

After a passage protracted by strong head winds, and a part of the time by thick weather, we anchored at St John, New Brunswick, on the afternoon of the 13th.

A large number of persons, estimated at fifty thousand, were congregated at this place to witness the ceremony of breaking ground for the European and North American Railway. The occasion had brought the lieutenant-governor of the Province, Sir Edmund Head, to St. John. We received from the 192 lieutenant-governor and the authorities of the city the most cordial welcome, and every hospitality was extended to us, nationally and individually.

The absence from St. John of the consul for the United States prevented my getting any official information on the subject of the fisheries; but from no source could I learn that there had been any occurrence of an unpleasant nature; and by all persons, official and private, here, as in the other provinces, a most anxious desire was expressed that the rights and privileges of the citizens of the United States, and of the inhabitants of the provinces, in relation to the fisheries, might be so distinctly defined, and so authoritatively announced, that there should be no room for misunderstanding, and no possible cause for irritation on either side.

I left St. John on the morning of the 17th instant, the *Fulton* in company, and anchored outside of this harbor on the evening of the 18th, in a dense fog. This morning we have succeeded in getting to a good anchorage, off Fort Constitution.

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I have the honor to be, sir, your obedient servant,

W. B. SHUBRICK,  
*Commanding Eastern Squadron.*

Hon. J. C. DOBBIN,  
*Secretary of the Navy.*

There is not one word in the whole of this report which shows that anything had taken place for which there was cause for any complaint whatever; and Lieutenant Commanding Watson, of the United States Navy, wrote the following dispatch, addressed to Commodore Shubrick:

UNITED STATES STEAMER FULTON,  
*Gaspé, Lower Canada, September 2, 1853.*

SIR: In accordance with your instructions of the 29th ultimo, I have the honor to report that I received on board at Charlottetown, Prince Edward Island, Major-General Gore, commander-in-chief of Her Britannic Majesty's forces in Nova Scotia, and staff, hoisted the English flag at the fore, and proceeded to Pictou, where I landed them. General Gore expressed himself much gratified at your having placed the *Fulton* at his disposal.

After parting from you off the island of Pictou, I proceeded, according to your directions, along the north side of the island, in Miramichi Bay, Chaleur Bay, and to Gaspé, where I was in hopes of meeting you. It was my intention to have gone farther up the bay of Chaleur; but a heavy sea induced me to run for Gaspé. While there, Her Britannic Majesty's steam sloop of war *Argus*, Captain Purvis, came in. Captain Purvis immediately came on board, and an interchange of civilities took place on the most friendly and courteous terms. Captain Purvis states that he has not had the least difficulty with our fishermen with one exception, and that so slight as not to be taken notice of.

On my way to this place, I passed between five and six hundred fishermen; and, in my conversation with those I spoke to, there appears to be the greatest harmony existing between them and the inhabitants.

On coming to anchor here, I waited on the collector and authorities of the port; and their statements tend to confirm my previous reports, that, so far from any dissatisfaction being felt at our fishermen, they are welcome on the coast, and nothing has yet transpired to alter my previously expressed opinion.

Very respectfully, I remain, your obedient servant,

J. M. WATSON,

*Lieutenant Commanding, United States Navy.*

COM. WILLIAM B. SHUBRICK,

*Commanding Eastern Squadron.*

Now, these are American official documents, which certify as to the treatment that the American fishermen had received at the hands of the cruisers up to that time. In order to show further what this treatment was I will mention the case of the *Charles*, which was seized by Captain Arabin, of the *Argus*, at Shelburne, on the 9th of May, 1823. Although this happened a long time ago, I sighted to show how the British Government treated these matters then and ever afterward. The *Charles* was actually seized in the very act of fishing; and there could be no doubt about the right to condemn her. But the midshipman who was put in charge of her, while in the course of his passage from Shelburne to St. John, according to the instructions of Captain Arabin, stopped some other vessels which were fishing, and, I think, brought one or two of them into St. John. The *Charles* was then put in the admiralty court and condemned; but when the British Government learned what had been done, inasmuch as Captain Arabin had exceeded his instructions by using the vessel as a cruiser while *en route* from Shelburne to St. John, before her condemnation, not only gave her up, but also paid the costs of the prosecution, and the other two vessels which had been so taken—whether they were liable to condemnation or not I do not know—were also given up. This was the treatment which American fishermen received at the hands of the British Government.

Again, at Grand Manan, two vessels were taken by cruisers in 1851 or 1852—I think they were called the *Reindeer* and *Ruby*—or before that, because the account of this affair is found in the Sessional Papers of 1851 and 1852. They were actually taken in one of the inner harbors of Grand Manan; a prize crew was put on board, and they were sent to St. Andrews; but on their way up, as these two schooners passed Eastport, as they necessarily had to do, an armed force came out from Eastport, headed by a captain of Militia, overpowered the crew, and took possession of them. Correspondence ensued on this subject—to which I call your attention—between the British Ambassador and the American Secretary of State, in which it was pointed out by the former that this outrage had been committed on the British flag; but through the whole of this correspondence I cannot find any apology was ever made, or that the British Ambassador's remonstrances on that subject were ever answered.

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No. 14.—1886, May 11: *Letter, Lord Lansdowne; Governor-General of Canada, to Earl Granville.*

GOVERNMENT HOUSE, *Ottawa, May 11, 1886.*

MY LORD, I had the honour to send your Lordship yesterday a telegram giving particulars of the detention on the 7th instant, at Digby, Nova Scotia, of the United States' schooner "*David J. Adams*" for breach of the Customs and Fishery Laws.

2. Your Lordship will observe that the case was one in which there was no doubt that the vessel had knowingly entered a Canadian port for an alleged purpose, her captain having endeavoured to conceal her name and port of registry. The evidence on this point, and also the proof that she had bought bait in large quantities, was, I understand, ample.

3. She had, in addition to this, violated sections 25 and 29 of the Customs Act of 1883 (46 Vict., cap. 12), having been for fully twenty-four hours in port without reporting to the Collector of Customs.

4. In consequence of the above occurrences, Captain P. A. Scott, R. N., in command of the fisheries police steamer "Lansdowne," took possession of the schooner and towed her to St. John, New Brunswick. Instructions had in the meanwhile been sent to him by telegraph, as soon as the Fisheries Department had been advised of the seizure, to detain the "David J. Adams" at Digby, it being thought best that the vessel should be libelled and the case tried in the Vice-Admiralty Court of the province in which the offence had been committed. In compliance with these instructions, Captain Scott took the "David J. Adams" back to Digby, where she now remains in charge of the Collector of Customs.

5. Proceedings will be taken against her: (1) for violation of the Customs Act above referred to: (2) for violation of the Dominion Fishery Act, 1868 (31 Vict., cap. 61); (3) for contravention of the provisions of the Convention of 1818 as enacted in the Imperial Act of 1819 (59 Geo. III, cap. 38).

6. No question has in this case arisen with regard to the limits of the territorial waters of the Dominion.

7. As your Lordship is no doubt aware, American fishing-vessels frequenting the coast of Canada have been in the habit of depending to a great extent upon Canadian fishermen for their supplies of bait. It has been usual for such vessels hailing from New England ports, as soon as the supply with which they had provided themselves on starting for their trip had become exhausted, to renew it in Canadian waters. Such vessels, if compelled as soon as they ran short of bait to return from the Canadian Banks to an American port, would lose a great part of their fishing season, and be put to considerable expense and inconvenience. Some idea of the importance of this point may be formed from the fact that Mr. Joucas, Commissioner to the London Fisheries Exhibition, and a high authority on all matters connected with the fisheries of the Dominion, in a paper read before the British Association at Montreal in 1884, estimates the cost of the bait used by each vessel engaged in the cod fishery at one-fourth of the value of her catch of cod.

8. There can, however, be no doubt that, under the terms of the Convention of 1818, foreign fishing-vessels are absolutely precluded from resorting to Canadian waters for the purpose of obtaining supplies of bait, and in view of the injury which would result to the fishing interests of the Dominion which the Convention of 1818 was manifestly intended to protect, if any facilities not expressly authorized by that Convention were conceded to foreign fishermen, my Government will, so long as the relations of the Dominion with the United States are regulated by the Convention, be disposed to insist upon a strict observance of its provisions in this respect.

9. I will keep your Lordship informed of any further occurrences which may take place in connection with this question.

I have, &c.

(Signed)

LANSDOWNE.

No. 15.—1886, July 21: *Report of a Committee of the Honourable the Privy Council for Canada, approved by his Excellency the Governor-General in Council.*

On a Report dated the 17th July, 1886, from the Honourable Mr. Thompson, for the Minister of Marine and Fisheries, submitting the following observations in reference to the Act entitled "An Act further to amend the Act respecting fishing by foreign vessels," which was passed at its last Session by the Parliament of Canada, and which has been reserved by your Excellency for the assent of Her Majesty the Queen.

194 A full and careful consideration of the subject with which the Act deals made apparent the necessity for such a measure for the enforcement, within Canadian waters, of the Statutes which have been already passed in the Imperial and Canadian Parliaments for carrying out the provisions of the Treaty of 1818 between Great Britain and the United States.

The Statute 59, Geo. III, cap. 38, provides the penalty of forfeiture as to any foreign fishing-vessels found fishing, or to have been fishing, or preparing to fish within 3 marine miles of any of the coasts, bays, creeks, or harbours in any part of Her Majesty's dominions in America, &c.

The Canadian Act of 1868 (chapter 61), entitled "An Act respecting fishing by foreign vessels," and its amendments, followed the Imperial Act and established the same penalty for the same offences. For all other offences against the Treaty and against the Imperial Act above referred to the only penalty now provided by Statute is that mentioned in section 4 of the Imperial Act viz., the penalty of 200*l.*, to be recovered in the Superior Courts.

The Minister has had his attention called to the fact, that the ordinary common law remedy for violation of a Statute, viz., indictment as for a misdemeanour, is an unsuitable one for such cases, because it would involve long personal imprisonment, even before trial (as the defendants would generally be foreigners without available security to offer for their appearance), and would after conviction be followed in nearly all cases by a further term of imprisonment, as the persons on whom the penalties would fall would probably be unable to bear a considerable fine.

It is obvious that the mere right to bring a suit against the masters of offending fishing-vessels is a remedy of little or no avail. Before Judgment for the 200*l.* could be obtained, the persons sued would be almost certain to be out of the jurisdiction of the Dominion Courts, and the enforcement of the Judgment would for that reason become in most cases impossible, even if the defendants possessed the means from which the Judgment could be realized.

The Minister submits that the penalty of forfeiture applied by the 2nd section of the Imperial Statute, and by the Canadian Act, to the offence of fishing, &c., would be a suitable and most available penalty for the infringement of the Statutes.

It cannot be claimed by the United States Government to be an excessive or an unreasonable penalty, because, by Statute No. 85 of the United States' Congress, lately assented to by the President of the United States, the same penalty is established against foreign vessels, whose masters, officers, or agents do any act which may be contrary to any Proclamation issued under that Statute.



The Committee concurring in the foregoing Report, and considering the great value of the Canadian fishing-grounds, and the necessity which exists for their protection from encroachments by foreign fishermen, in order that these natural resources may be made available to our own people, recommends that the attention of Her Majesty's Government be drawn to this subject, and that representations be made as to the necessity for having the Royal Assent given at as early a day as possible to the Act of the last Session, which is before referred to.

All which is respectfully submitted for your Excellency's approval.

(Signed)

JOHN J. MCGEE,  
*Clerk, Privy Council.*

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*Section 17 of Bill No. 85, passed by the United States' Congress, 1886, referred to in the foregoing.*

That, whenever any foreign country whose vessels have been placed on the same footing in the ports of the United States as American vessels [the coastwise trade excepted] shall deny to any vessel of the United States any of the commercial privileges accorded to national vessels in the harbours, ports, or waters of such foreign country, the President, on receiving satisfactory information of the continuance of such discriminations against any vessels of the United States, is hereby authorized to issue his Proclamation excluding on and after such time as he may indicate from the exercise of such commercial privileges in the ports of the United States as are denied to American vessels in the ports of such foreign country all vessels of such foreign country of a similar character to the vessels of the United States thus discriminated against, and suspending such concessions previously granted to the vessels of such country; and on and after the date named in such Proclamation for it to take effect if the master, officer, or agent of any vessel of such foreign country, excluded by said Proclamation from the exercise of any commercial privileges, shall do any act prohibited by said Proclamation in the ports, harbours, or waters of the United States for or on account of such vessel, such vessel and its rigging, tackle, furniture, and boats, and all the goods on board, shall be liable to seizure and to forfeiture to the United States, and any person opposing any officer of the United States in the enforcement of this Act, or aiding and abetting any other person in such opposition, shall forfeit 800 dollars, and shall be guilty of a misdemeanour, and, upon conviction, shall be liable to imprisonment for a term not exceeding two years.

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No. 16.—1886, November 26: *Letter, the Earl of Iddesleigh to Sir L. S. Sackville West.*

FOREIGN OFFICE, November 26, 1886.

SIR: With reference to my despatch of the 4th September last, I transmit to you herewith a copy of a letter from the Colonial Office, inclosing a copy of a despatch, with its inclosures,\* from the

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\* This despatch and its enclosures are printed in the appendix to the United States Case, at pages 879-881.

195 Officer administering the Government of Canada, respecting the action of the Customs officer at Magdalene Island in the case of the United States' fishing-vessel "Mascotte"; and I have to request that you will communicate a copy of the despatch, with its inclosures, to the United States' Secretary of State.

I am, &c.

(Signed)

IDDESLEIGH.

No. 17.—1890: *Extract from Seventh Annual Report of the Deputy Minister of Fisheries for Canada.*

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#### PURSE SEINES.

The destruction that the use of these seines has worked in the mackerel fishery, both on the coasts of the United States and Canada, has ceased to be either a matter of doubt or controversy; the consideration, therefore, of remedial measures is of paramount importance.

By reference to Appendix 9 it will be seen with what unerring certainty, the decline of this fishery during the past few years has gone on, and although in particular localities the take of mackerel for the season of 1890 shows an increase, as a whole the catch has been less than any year in the history of the fishery.

Shore fishing in Canadian waters was, during the past season, carried on almost wholly by means of hook and line, and the high prices obtainable for Mackerel rendered the operations of the fishermen very profitable.

It is, of course, well understood that United States fishing vessels have, since the lapse of arrangements under the Washington Treaty, been prohibited from fishing by purse seines, or any other means, within the territorial waters of the Dominion, but they have been, and are, free to pursue their fishing operations, outside such limits, in any manner they see fit. When it is remembered that during the season of 1885, the last in which United States vessels had free access to our inshore fisheries, the total catch was 330,000 barrels, while the catch during the past season was but little over 100,000 barrels, it will be realized how startling the decrease has been. The fact, however, must not be lost sight of that the percentage of fish taken by our own fishermen within our territorial jurisdiction largely exceeded in 1889 that of 1885.

The United States Government realizing the disastrous falling off on its coasts of the mackerel fishery, but being unable to directly control or successfully prohibit the use of purse seines, to which such falling off was attributed, passed an Act prohibiting the landing of mackerel taken by means of these seines on any part of the coast of the United States, before the first of June in each year. As by this date many of these migratory fish had found their way to the coast of Nova Scotia and the Gulf of St. Lawrence, it will readily be seen that had the fish been at all plenty in the waters named, the seining operations of the United States vessels would, to a very much larger extent than was done, have been there carried on all such vessels being provided with purse seines.

To take any action looking to a restriction upon Canadian vessels in the use of purse seines, while those of the United States continue fishing operations therewith, would be manifestly unjust, and it was therefore deemed expedient to seek joint action on the part of the Governments of the United States and of Canada, having in view the abrogation of this mode of fishing to which may be directly traced the well nigh destruction of our valuable mackerel fishery.

On the 22nd. May 1890 the following minute of the Privy Council was adopted, based upon your report, dealing with the whole question, and as directed by this minute, the subject was brought to the notice of the Government of the United States through the usual official channel:—

On a report dated 24th April 1890, from the Minister of Marine and Fisheries, stating that the records of the Department of Fisheries are replete with reiterated complaints against the use of purse seines for the capture of mackerel, on account of their destructive nature.

The Minister observes that the principal arguments against this particular form of fishing engine are that a vast and alarming numbers of young and unmerchantable fish are destroyed, and while they at the period of destruction are of no commercial value, yet if allowed to remain in the water they would in course of time mature and keep up the supply of this fish. The effect of the purse seines upon the fish when schooling is to break up the schools: rendering the fish wild and shy, keeping them constantly on the move and frequently causing them to disappear for a long time.

The Minister further observes that the Purse Seine is very fully described in Professor Brown Goode and associate's report as follows:—

"The large seine used only in connection with the largest kind of seine boat is 190 to 225 fathoms in length, and 20 to 35 fathoms in depth when it is hung, being deeper in the center of the bunt than at the extreme wings, one of which, the 'boat end,' is from one to 10 fathoms deep, and the other, the 'dory end,' varies from about 7 to 15 fathoms in depth. It is made of three kinds of twine. The bailing piece, which is a section of the net occupying about 10 or 12 fathoms along the centre of the cork line, and having about the same depth as length, is made of the stoutest twine. Beneath this and composing the remainder of the bunt and extending to the bottom of the seine is a section knit of twine a size smaller. There is also a band of large twine 15 meshes 196 in depth, extending along the cork line of the seine on either side of the 'bailing piece' to the extremity of each wing. The remainder of the net is made of smaller twine.

"A seine 300 fathoms in length is usually about 1,000 meshed deep, both in the bunt and in the wings. The strongest twine is placed at those points where the seine is subjected to the greatest strain. On the cork line are two or three sizes of corks, the largest being placed over the 'bailing piece,' the smallest generally at the ends of the wings. The cork in the middle of the seine is much larger than the rest, and is painted or covered with canvas in order that it may be easy to find the centre of the net either night or day. To one end of the cork-line at the upper corner of the wing which is first thrown out when the seine is set, is a buoy. The seine is hung to lines which are called the hanging lines. The lead line is placed as in an ordinary seine, and is weighted with sinkers about two ounces in weight, which are attached to it at intervals varying from a few inches to several feet. The arrangement of the pursing rings and bridle is described elsewhere. In a mackerel seine of 175 fathoms the bridles are about 15 to 18 feet in length, and the rings, which weigh 1½ lbs. and are three inches in diameter, are fastened to the middle of each bridle. The middle ring is on the bottom of seine, opposite the middle cork already referred to, and is usually made of different metal from the other rings, or is larger, so that the center of the bottom of the seine can be easily found. Small galvanized-iron blocks or pulleys are now used to a considerable extent instead of rings, and are found much better adapted for the purpose, since the purse line runs far easier through them. The purse-line extends through the rings, its centre is marked by a line tied around or tucked through its strands, but more frequently now by a brass swivel, into which the purse line is spliced, and which serves the double purpose of marking the centre of the line and preventing it from kinking."

Its early history is described thus: Captain E. J. Deblois of Portsmouth, Rhode Island, says:—

“The first purse seine that was made so far as I know, was made by John Tallman, the first, and Jonathan Brownell and Christopher Barker, in the year 1886. It was 264 meshes deep and 65 fathoms long. The purse weight was 56 pounds weight, and the blocks were the common single block, and they have to reeve the end of the purse line through the blocks before they put the purse weight overboard.”

The Minister further observes that the first seine operated north of Cape Cod was used by Captain Nathaniel Adams of Gloucester, in the schooner “Splendid” in the year 1850, but it was not until about 1860 that it became generally used in a form similar to the present purse seine, since which time it has undergone great improvements and its destructiveness has been much enhanced, particularly within the past two years, by the introduction of the steam seine boat. By the adoption of these steam propellers the boats are enabled to surround the schools of fish much more readily and with wonderfully rapidity, besides which advantage is taken of the steam power to purse the nets, which can be done in this manner in an incredibly short space of time.

The Minister further observes that it thus appears that this fishing engine may be said to have reached the height of its destructiveness, and in the face of the appended extracts from reports of fishery officers, total depletion of the sea coast fisheries seems to be what must inevitably follow the continuance of its use.

(See Appendix No. 9 to this Report.)

The Legislature of the State of Maine seemed to be fully alive to the baneful effects of this destructive method of fishing, for in the year 1883, that body passed an Act for the protection of migratory fish, prohibiting the use of the purse and drag seines for taking mackerel within any bay or inlet, not more than two miles wide, under a maximum penalty of \$200, (*Rev. Statutes of Maine*, '83, sec. 17, c. 40, p. 373) and later on, in 1885 this Act was amended to include bays three miles wide, and the extreme penalty increased to \$500, making the Statute read as follows:—

“Sec. 17. The taking of mackerel, herring, shad, porgies or menhaden, and the fishing therefor by the use of purse and drag seines is prohibited in all small bays, inlets, harbours or rivers, where any entrance to the same, or any part thereof, from land to land, is not more than three nautical miles in width, under a penalty upon the master or person in charge of such seines, or upon the owners of any vessel or seines employed in such unlawful fishing of not less than \$300 or more than \$500, to be recovered by indictment, or action of debt, one-fourth of the penalty to the complainant or prosecutor, and three-fourths to the county in which the proceedings are commenced, and there shall be a lien upon the vessels, steamers, boats and apparatus used in such unlawful pursuit until said penalty, with costs of prosecution is paid, but a net for meshing mackerel or porgies, if not more than 100 meshes in depth, and a net for meshing herring of not more than 170 meshes in depth, and a net for meshing shad of not more than 75 meshes in depth shall not be deemed a seine.” (*Acts and Resolves of the State of Maine*, 1885, c. 261, p. 215.)

And the Federal Legislature of the United States recognized the necessity for some restrictive measure, if even of only a partial nature, as is shown by the following law providing against the landing or importation of mackerel so caught between the 1st of March and the 1st. day of June into the United States:—

“An Act relating to the importing and landing of mackerel caught during the spawning season.

“Be it enacted by the Senate and House of Representatives of the United States of America, in Congress assembled. That for the period of five years, from and after the 1st. day of March, 1888, no mackerel other than what is known as Spanish mackerel, caught between the 1st. day of March and the 1st. day of June, inclusive of each year, shall be imported into the United States or landed upon its shores. Provided, however, that nothing in this Act shall be held to apply to mackerel caught with hook-and-line from boats, and landed in said boats or in traps and weirs connected with the shore,

"Sec. 2. That section 4321 of the Revised Statutes is amended for the period of five years aforesaid, so as to read before the last sentence as follows:— 'This license does not grant the right to fish for mackerel, other than for what is known as Spanish mackerel, between the 1st. day of March and the first day of June, inclusive of this year.' Or in lieu of the foregoing there shall be inserted so much of said period of time as may remain unexpired under this Act."

"Sec. 3. That the penalty for violation or attempted violation of this Act shall be forfeiture of license on the part of the vessel engaged in said violation, if a vessel of this country, and the forfeiture to the United States, according to law, of the mackerel imported or landed, or sought to be imported or landed."

"Sec. 4. That all laws in conflict with this law are hereby repealed." (Approved 28th. February 1887.)

"Prof. Brown Goode (See V, Vol. 1) says:—'Opposition to the purse-seine from 1870 to 1892.'

"Since the adoption of the purse seine no year has passed without a considerable amount of friction between the fishermen using this engine of wholesale destruction in the capture of mackerel, and those engaged in fishing with other forms of apparatus. Petitions to Congress and State Legislatures have been made from both sides, and in some instances laws have been passed by State Legislatures prohibiting the use of nenhaden seines, within certain specified tracts of waters, such as the Chesapeake Bay. These laws, while especially antagonistic to the nenhaden fishery, were aimed chiefly at the purse seine as a means of capture and doubtless would have been equally prohibitory of mackerel fishing with purse seines, had this been attempted within the limits. . . . In 1878, a delegation of fishermen from Portland, Me., and Gloucester, Mass., visited Washington for the purpose of securing the passage of a law prohibiting the use of purse seines in the mackerel fishery."

In 1877, the late Commissioner of Fisheries, Mr. Whitchee, in his annual report for that year, said: "The modes of fishing most objectionable amongst the fishermen and not provided against by our fishery laws, are purse seines and trawls. Their use has been petitioned against from several seacoast districts." (*Supp. No. 5, 10th. Ann. Rpt. Min. M. and F. 1877, p. lii.*)

On the 27th March, 1879, the late Dr. Fortin, M. P., at one time commander of the fisheries protection vessel "La Canadienne," in forwarding to the Department a resolution of the County Council of Gaspé, strongly urging the abolition of purse seining along the shores of the Gulf of St. Lawrence, said: "No doubt it has been proved beyond question that those engines are too destructive to be tolerated much longer on our shores."

In a haul of the purse seine it frequently happens that there are enclosed say 100 barrels of fish, only a small portion of which are marketable, the remainder being thrown overboard dead, and sinking to the bottom, foul the ground and drive off the other fish.

In evidence procured by the Department of Fisheries from 20 masters of United States and 10 masters of Canadian vessels, 14 of the former and 9 of the latter utterly condemned the purse seine as injurious to the fishery, and the interests of the fishermen alike, not only from the total loss of the unmerchantable fish (which form a large proportion of the take), but from the defilement of the waters and bottom, and the consequent diversion of the schools of fish from their accustomed haunts.

It must be remembered that while the mackerel cannot be caught by hook and line during the spawning season, since they will not bite at that time, the purse seines take them at all times. Captain John Nason, of the schooner "Pendragon," Gloucester, 40 years a mackerel fisher, says: "All mackerel killed before 1st. July in the Gulf are killed before spawning."

Captain John Staples, schooner "Vesta," Gloucester, 30 years a mackerel fisherman says: "In the North Bay, before the 1st July, about two-thirds of the catch are female spawn mackerel, which of course are destroyed before spawning. Upon the least I should say that more than 100 barrels are destroyed for every barrel caught before the 25th July, in the North Bay."

The preponderance of the evidence by many others proved that at least half of the catch was killed before spawning.

The effect upon the incoming schools of fishes can perhaps be appreciated, if it be remembered that the fishing fleet consists of, say 250 sail, each attended by two seine boats, in all 750 craft, large and small, manœuvring within a distance of five miles from the shore, day and night, on an extent of 20 or 25 miles of coast, afterwards dispersing into squadrons of from 50 to 60 vessels,

Apart from the damage to the fishing grounds by purse seines breaking up the schools of fish, the proportion of useless fish thrown overboard dead, as previously explained, with attendant deleterious results, is almost incalculable.

The Minister desires to invite attention to the statistics of the mackerel importations in the State of Massachusetts for three decades: the first from 1850 to 1859, during which period the purse seine was not in use; the second from 1863 to 1872, ten years following the general introduction of the purse seine; the third from 1880 to 1889, after the purse seine had been continuously used for many years. (*15th Annual Report of the Boston Fish Bureau, 1889*).

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*Barrels of mackerel inspected.*

Year.	No. 1 grade.	Total catch.
1850.....	88,401	242,572
1851.....	90,765	329,244
1852.....	84,030	198,120
1853.....	49,015	133,340
1854.....	30,595	135,349
1855.....	29,302	211,956
1856.....	89,333	214,312
1857.....	84,519	168,705
1858.....	75,347	131,602
1859.....	61,330	99,715
Total.....	682,637	1,864,915
Yearly average.....	68,263	186,491
1863.....	67,985	306,943
1864.....	103,383	274,357
1865.....	153,723	256,796
1866.....	150,332	231,696
1867.....	122,808	210,314
1868.....	93,091	180,056
1869.....	72,924	234,210
1870.....	66,046	318,521
1871.....	105,187	257,416
1872.....	71,866	181,856
Total.....	1,007,345	2,454,265
Yearly average.....	100,734	245,426
1880.....	20,453	243,958
1881.....	15,598	256,173
1882.....	39,045	258,382
1883.....	20,852	154,140
1884.....	22,377	283,794
1885.....	15,742	215,578
1886.....	19,574	66,042
1887.....	23,893	77,488
1888.....	14,545	50,907
1889.....	7,143	12,143
Total.....	198,222	1,618,603
Yearly average.....	19,822	161,860

These figures reveal a most alarming decrease in the total catch of mackerel, and especially so in that of No. 1 grade, for during the first decade, without the assistance of this improved and destructive method of catching fish, the take was very large, being 1,864,915 barrels, or an average of 186,491, while of this quantity there was of No. 1 quality 682,637 barrels, an average of 68,263 barrels per annum.

The next decade covers a period almost immediately following the general introduction of purse seines and, as is to be expected, shows an increase catch, the total take being 2,454,265, an average of 245,429 barrels per annum, while of No. 1 quality the catch was 1,007,345, a yearly average of 100,734 barrels. This productive state however, could not long obtain, as the fish could not withstand the enormous drain upon its marketable and immature product by the destructive purse seine.

The last decade, which comes down to the year 1889, after about 20 or 30 years, use of purse seines, shows that notwithstanding the improvements of

late years to enhance their effectiveness, a deplorable decline in the catch has taken place, for we find a total catch of only 1,618,603 barrels, and an annual average of 161,860 barrels, and of No. 1 grade a total of 198,222, a yearly average of but 19,822 barrels.

*Summary.*

Years.	Total catch.	Yearly average.	No. 1 quality.	Yearly average.
1850-59 .....	1,864,915	185,491	682,637	68,263
1863-72 .....	2,454,265	245,426	1,007,345	100,734
1880-89 .....	1,618,603	161,860	198,222	19,822

Comparing the catch of the later decade with the aid of its perfected and destructive fishing engines, with that of the first decade, with its primitive modes of capture, an annual average decline in the total catch of mackerel of 23,631 barrels, and in catch of No. 1 grade of 48,441 barrels appears.

While the Minister of Marine and Fisheries is not prepared to state that this decline is due solely to the use of improved fishing engines, or that some other natural or minor causes may not affect the movements of the vast mackerel schools in approaching the shores, yet he is of opinion that enough evidence has been adduced to attribute the steady decrease in the size and superior quality marketed, mainly to the destruction of small and immature fishes and the breaking up of the schools by purse seines.

The question now being dealt with is one of paramount importance to all interested in the deep sea fisheries of the Atlantic coasts of America, and it is submitted that some concerted action is necessary towards ameliorating the evil effects of this highly improvident method of fishing.

The Committee concurring in the above report recommend that Your Excellency be moved to forward a copy hereof to the Right Honourable the Principal Secretary of State for the Colonies for submission to Her Majesty's Government with the request that it be brought to the notice of the Government of the United States of America, with the view to obtaining some International action or Legislation looking either to the prohibition or restriction of the use of purse seines as may be deemed advisable for the preservation of the mackerel fishery.

This Department has since been advised that the Secretary of State for the United States had expressed his willingness to give the subject his careful consideration, with a view to the adoption of concerted measures to diminish the mischief complained of. I am, therefore, losing no opportunity of collecting further data and evidence on this important question, that it may be available when the subject comes up for consideration.

The opposition to a restriction being placed on the use of these nets will, at the present time, probably be much less than it would have been up to a recent period, many of the fishermen having at last conceded the irreparable damage their use entailed, in the destruction of immense quantities of both immature and spawning fish.

All which is respectfully submitted for Your Excellency's approval.

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*Extract from Appendix No. 9 to the foregoing Report, being an Appendix to Minute of Privy Council, 22nd May, 1890, on the use of Purse Seines for the Capture of Mackerel.*

Commander Lavoie, of the Government Fisheries Protection steamer "Lady Head," in his report for 1878, Supplement No. 4 to the Eleventh Annual Report of the Minister of Marine and Fisheries, 1878, p. 64, said:—

It can easily be imagined what terrible havoc these 350 purse seines must make when engaged during two or three consecutive months in sweeping the

same grounds. Nothing can escape them, and it is admitted by American fishermen themselves that a schooner making her catch with these fishing engines destroys an equal number of young herring and mackerel. These seines ought, in my opinion, to be forever banished from our waters, and their use especially prevented in the small bays where fish are wont to go for the purpose of depositing their eggs, and where they breed and grow. . . .

Dr. Wakeham, Commander of the Government Fisheries Protection steamer in the Lower River and Gulf, during the season of 1879, Supplement No. 2 to the Twelfth Annual Report of the Minister of Marine and Fisheries, 1879, p. 56, Appendix No. 3, said:—

These seines, besides destroying wastefully an immense quantity of fish that is never saved, breaks up the schools and frightens the fish off the coast. Such, at all events, is the opinion of those best fitted to judge among our fishermen.

Fishery Inspector Duvar, for the Province of Prince Edward Island, for the year 1879, Supplement No. 2, to the Twelfth Annual Report of the Minister of Marine and Fisheries, 1879, p. 265, Appendix 15, said,—

As regards the much vexed question of seining, it is historical that craft fitted out for fishing on the coasts of Massachusetts and Maine, as recently as 1863, used seines only for the purpose of taking "porgies" for mackerel bait up to 1868, (or say 1870) when the practice was entered into on a large scale in American waters for the taking of mackerel. Up to that season, it is stated, vessels could each take 400 to 1,000 barrels per season with hook and line, but after seining had prevailed only up to 1873, 300 barrels per season would be all the hook-and-linesmen could take while the seiners even in the face of the diminishing supply, would capture full cargoes of large mackerel, besides each vessel netting a surplus of 1,000 barrels of small fish, which they made no use of. The supply of large fish becoming scanty the American fleet tried their fortune with seines in the Canadian waters of "the Bay." Here it was their object to take only such first quality fish as would fetch a high price in the United States markets, the smaller fish not leaving any margin for profit. Now, the established fact that in ordinary fishing weather, each long seine may, and usually does, draw to the vessel's side 20 to 100 barrels of small herring and mackerel, over and above large ones, affords a basis on which to make calculation of the value of the fishery in which foreigners share, and of the destruction done to such fishery. Thus, 300 sail set their seines twice a day during, say, forty fishing days, or 16,000 times; and, with even the proverbial fisherman's luck, take at each cast of the seine from the waters to perish, make no use of and throw overboard, only 15 barrels of fish of smaller size than they require—this is putting it at the lowest conceivable figure—the result shows at least 240,000 barrels of fish at, say, \$2 per barrel, or \$480,000 of injury done to the Gulf fishery in six weeks of actual time. I am aware there are persons capable of judging who may even consider the estimate far too low.

Advices, supposed to be reliable, state that the average number of 250 schooners, or more, fitted out, most of them with seine boats and seines, from Gloucester and other American ports for the Canadian waters this spring. When they arrived they found the fish, although schooling freely, were of small size, which fact, it may be imagined, did not lessen the number of those under 11 inches in length that would be thrown overboard before a cargo of prime fish fit to bring a high price could be secured.

Supplement No. 2 to the Eighteenth Annual Report of the Minister of Marine and Fisheries, "Fisheries Statements," 1880, Appendix No. 3—Fishery Officer Wakeham's report for 1880:—

There is no doubt that some years ago the mackerel was so much disturbed by the hosts of American schooners, with their destructive purse seines, that this fish was driven off the coast. During the past three years we have seen fewer American vessels, and now the mackerel are frequenting their old haunts in greater numbers. This season they were seen schooling in great quantities, all the way from Cape Chatte to Maguasha Head.



Mr. W. H. Venning, late Inspector of Fisheries for New Brunswick, in his report for 1886, Third Annual Report of the Department of Fisheries, 1886, Appendix No. 4, says:—

There seems good grounds for the fears expressed by many of the old fishermen that the general use of purse seines in Bay of Chaleurs will be very destructive to the mackerel and herring fisheries. There is no doubt that the destruction of young mackerel along the American coast from the use of these seines is enormous, and the same destruction will probably follow their general use by our fishermen. Mr. B. P. Chadwick, of Bradford, Mass., who has been investigating this matter with great care for many years, thus writes Professor Baird, head of the United States Fish Commission:

"The present method of our fishermen in seining mackerel is such that while taking over 500,000 barrels of good, sizeable fish, it causes a total destruction of over 1,000,000 barrels of young fish that have grown to one-third the usual size of fully matured fish. Could this number of fish be protected and caught when full grown the amount would be 3,000,000 barrels; and at the present price of No. 1 mackerel (\$15 per barrel), the amount of \$45,000,000 worth of fish food is no small item to our people. The hay crop of Maine, New Hampshire, Vermont and Massachusetts is 3,150,000 tons. The crop has a market value of \$37,800,000. Now if the farmers should destroy the hay crop annually the effect upon agriculture in these States would be disastrous; and yet the present method of seining mackerel destroys \$45,000,000 worth of food-fish, and scarcely a voice is raised against it. Mackerel vessels carry from two to four seines each. I have known a single seine destroy 150 barrels of young mackerel in a day in the taking of 30 barrels of marketable fish. If one seine does injury to this amount in a single day, what must be the effect of using the seines of a mackerel fleet of 400 vessels for ninety days? The ocean is large and mackerel are prolific. The spawn of a single mackerel is nearly 500,000. Were it not for these two facts the end of mackerel fishing would soon be reached. As it is, the catch of No. 1 fish is small, there being scarcely any in the market, and these few selling at an exorbitant price. This condition is caused by the destruction of the young fish."

Inspector Bertram, Cape Breton, in his report for 1888, Fifth Annual Report of the Department of Fisheries, 1888, p. 49, says:

Herring has proved the staple branch of the Cape Breton fisheries for the year 1888. With two or three minor exceptions, the herring fishery turned out remunerative to a degree that went far to compensate for the loss in other branches. Considering the value of herring as an article of profitable foreign commerce, and as a staple of food for home consumption, the wanton destruction of thousands of barrels of fish on the coasts of this island annually, thrown back in the sea by mackerel seiners, is a most serious matter in the economy of one of the most valuable natural resources of this country. This point will be found more fully referred to in this report under the heading of "Destructive Methods of Fishing."

#### DESTRUCTIVE METHODS OF FISHING AND WASTE OF FISH FOOD.

This is a subject which requires serious consideration and prompt action in the application of prohibitive measures, if our present coast fisheries are to be saved from extinction. The two principal agencies in this work of destruction and waste are:—

Purse seining and trawling.

Against these two agencies of mischief our boat fishermen send up a united and universal protest. With fishermen of the United States and those of the Provinces, hand line fishing is now superseded by the use of seines and trawls. Both are destructive to fish, and the numbers now engaged in these methods of fishing are greatly in excess of all reasonable demands on the utmost possible fish-producing powers of this or any other coast of equal extent.

Purse seining is liable to the following objections:—

1. When a seine is thrown amongst a school of mackerel or other fish the school is broken up and scared, so that what escapes from outside the seine enclosure is scared and makes off to deep water for a refuge. This effectually destroys all chances of boat fishermen, who depend on hand-lines and ordinary nets, for a share of the broken schools.

2. When, for instance a seine is thrown for mackerel, it encloses the fish of every kind within its great area, and the aggregate quantity of these varieties are frequently much greater than that of the fish sought to be entrapped, including the small, valueless fish as well as the large.

3. When the seine is closed, and the work of taking out commences, all kinds of fish, large and small, good and bad, which are not of the grade sought, are thrown dead into the sea, thus polluting the bottom to an extent which repels living fish from its proximity. By this method thousands of barrels of herring and hundreds of quintals of cod, including bait and other fish, are destroyed, and boat fishermen, who are depending on them for a supply, are deprived of all participation in the catch.

4. The large quantities thus destroyed in the seining process is far beyond the powers of nature to sustain by reproduction, consequently, the fishing grounds are being rapidly depleted of their tenants.

Mr. J. H. Duvar, late Inspector of Fisheries for Prince Edward Island, in his report for 1888, Fifth Annual Report of the Department of Fisheries, 1888, Appendix No. 4, says:—

As to the outcry against seining, which has this year been particularly loud, there may be something in it. The effect of 250 fast-sailing vessels chasing the fish all day long can well be imagined. Without going into the doctrine of heredity that continual prosecution develops a new instinct in animals, even in fish, it would almost seem as if the mackerel of the Gulf are growing more wary and shy. Little else can be expected where the fish schools, wherever found, are instantly broken up and the alarmed fish that escape the meshes make off in wild alarm for miles before they become quiet again. Among these fugitives the hook-and-line fishermen have a poor chance, but the evil is not remediable.

Mr. W. H. Venning, late Inspector of Fisheries for New Brunswick, in his report for 1888, Fifth Annual Report, Department of Fisheries, 1888, Appendix No. 3, said:—

The failure recorded last year in the mackerel fishery has again occurred, and this year is more complete. In 1880 the catch was 19,650 barrels and 66,427 cans. In 1886 the catch was 17,868 barrels and 70,128 cans. In 1887 only 3,607 barrels and 44,278 cans were caught. After making all allowance for the alleged erratic and uncertain movements of mackerel, their pelagic wanderings and changing habitat, so great a decrease in a few years would indicate some general and hitherto unknown cause. In my opinion, based on many years observation, extensive reading and converse with old and experienced mackerel fishers, the causes are: 1<sup>st</sup>. The great destruction by purse seines of gravid parents and half-grown young fish; 2<sup>nd</sup>. The falling supply of food in Bay Chaleur and the Straits, consequent on the great destruction of smelts, frost fish and flounders in all the Counties bordering these waters, where alone this fish is pursued by our fishermen. The myriads of young fry which formerly crowded all our estuaries and afforded the kinds of food that the mackerel seeks inshore, are no longer there. The waters are depleted of this food; consequently, the schools are no longer attracted to the in-shores. We see the same result in American waters, where purse seines have destroyed the gravid parents and immature young fish, and the porgies on which they feed. The scarcity of mackerel in American waters, continued with the continued demand

for them, has led to the importation of large quantities from England, whence the future supply will probably come. While purse seines and bag-nets are allowed without restriction, I can see no reasonable hope of any improvement in the mackerel fishery. My present conviction is that there should be a close time to cover the spawning season, and that purse seines should be prohibited in Canadian waters. I have seen our salmon, shad, bass, alewives, oysters and lobsters all dwindling away for want of protective laws, and now the most valuable fish of all is being exterminated by the unrestricted use of destructive implements and the wanton waste of spawning fish.

Lieutenant A. R. Gordon, R. N., in his report for 1888, Fifth Annual Report, Department of Fisheries, 1888, Appendix "A," said:—

The purse seine is a large fine mesh net, made out of tarred cotton twine. These nets were at first both clumsy and costly, but of late years not only has the net been made simply perfect, but the price has been put at such a figure that they have been adopted by Canadians more extensively, and entirely by United States fishermen. The basis of this fishery is a schooner carrying two seines and two seine boats; the seines are called the deep and shallow seines, the one being about 15 and the other about 10 fathoms deep.

The relation between the reduced productiveness of our mackerel fishery and the adoption of the purse seine is one of the problems now most urgently presented for solution.

In protecting a fishery the required conditions are: 1st. Proper means must be used for the capture of fish; 2nd. These means must only be used at a proper time, and the question then arises: Is the purse seine a proper means of prosecuting the fishery, when used as it now is?

In order to prevent the harrassing of the schools of unspawned fish on the United States coast, a law was passed by Congress prohibiting the landing in the United States of mackerel caught with a purse seine before the 1st June in any year—thus in practice admitting that the use of the purse seine prior to that date was liable to injure the fishery. The condition of the fish which prevails on the United States coast up to the 1st June is precisely that of the Gulf of St. Lawrence up to, say, 20th July, and therefore this date of prohibition, which may afford adequate protection to the fish on the United States coast, affords none to those on ours. But the point is none the less established that a Government, whose ruling principle of fishery legislation has been to  
202 interfere as little as possible with the liberty of the fishermen, has definitely concluded that the purse seine, used prior to the spawning season, is injurious to the fishery.

Again, having further reference to this subject, Lieutenant Gordon, R. N., in a special report in 1888, said:—

It frequently happens that large numbers of undersized and unmerchantable fish are thus enclosed with a small percentage of good fish, so that in order to save the few the large numbers which might have grown into real value are uselessly and ruthlessly destroyed. In this way also quantities of herring have frequently been destroyed, as they are of no use to the fishermen.

The most serious damage which the purse seine does to the fish is, however, not the capture of young and immature fish, but the killing of the parent fish by fishing at improper times, before spawning. If all the parent fish which come into the Gulf annually were allowed to spawn peacefully, the damage done to our fishery . . . would be greatly minimized. . . .

I am myself of opinion that nearly half of the catch made by seines in the Gulf is that of unspawned fish, and this destruction of parent fish at improper times, together with the wholesale and useless destruction of immature fish is what has brought about the present depleted state of the mackerel fishery.

That the use of the purse seine at improper times lies at the root of the evil is the belief of nine out of ten of those whom I have interviewed, and who have the means of judging; and this fishing, instead of being a steady working fishery, such as it used to be in the old hook-and-line days, has now become a sort of steeple chase and lottery business, in which there are few prizes and many blanks; and the feeling among those men was well expressed to me by the captain of one of our Nova Scotian vessels, who said: "All I want, Sir, is one day at the fish with these prices; I ask no more." The majority of those interested are in favour of the total abolition of the purse seine, but

as long as some continue to use it others must, in self-defence, do the same. No remedy can be effectual which is limited in its operation to the three-mile limit, for mackerel spawn, like that of the codfish, floats on the surface, and the fish prior to spawning feed at all distances from the shore.

Inspector A. C. Bertram, in the Annual Report of the Department of Fisheries, 1889, Appendix No. 3, p. 50, says:—

THE CHIEF AGENTS WHICH CAUSE SHORTAGE OF CATCH.

The first and principal of these causes, the fishermen are everywhere unanimous in agreeing upon—that is, the shore fisheries are being ruined by purse seine fishing, as well as by trawl or set line fishing. . . .

The consequence is, that the schools are broken, and such as escape the seines are scared away and lost to further capture by the boat fishermen. The mischief does not end here, for on being enclosed in seines at least 50 per cent. on an average of the fish are of kinds not wanted. This residue is taken out dead, thrown back into the water, and to this mass of dead, rotting matter are added the offals or cleanings from the fish retained, by which a large area of bottom is strewn, by aid of wind and tide, with tons upon tons of putrid matter, which repels all approaching schools for the remainder of the season. This process repeated upon the same grounds and within the same bays, year after year, destroys the fish beyond the powers of reproduction; and the condition of the waters, together with repeated scaring away, leads the fish by degrees to abandon these places for other grounds. There is now no more firmly or accepted fact than that the fish shun filthy and polluted waters, just as gaminivorous animals on land avoid filthy pastures whenever they can, by seeking out cleaner grounds. That fish will flee from tainted bait, in place of being attracted by it, is known to everyone, and is a great illustration of the aversion of fish to contact with putrid or even tainted matter. Out of a haul of 500 barrels by a purse seine, from 200 to 250 barrels will be rejected, and is thus lost to food and commerce, besides being thrown out dead, to pollute the waters and the bottom. This putrid mass will be largely increased by offals from the retained fish being thrown in after it. . . .

Overseer Duncan Cameron, of St. Peters, reports a decrease in every branch of deep-sea fishing excepting alewives. This falling off is not attributable to local causes or to a less vigorous prosecution of the industry, but to the fact that on the approach of fish inshore in the spring they are frightened away by American and Canadian seiners. This cause of the decrease in the fishery is also entertained by the most experienced fishermen of this district. A Regulation prohibiting the use of Purse seines and trawls inshore is much wanted.

\* \* \* \* \*

Overseer Duncan McDonald, of Aspy Bay, says:—

A great many mackerel were taken this year by hook-and-line, and it is a pity that this ancient and successful mode of fishing was not generally practiced. It certainly would be more profitable for the local fishermen and far better for the fishery. Nothing is so calculated to destroy this fishery as the wholesale destruction caused by seines. Had it not been for seining, the mackerel fishery would have been 50 per cent. better. The schools were broken up and the fish frightened away.

\* \* \* \* \*

Report of Lieut. A. R. Gordon, 1889, Report of the Department of Fisheries for the calendar year 1889. Part III, page 6.

\* \* \* \* \*

The following is the take of mackerel for the years 1888 and 1889, made by United States fishing vessels off the Nova Scotian coast and in the Gulf of St. Lawrence:—

1888.—83 vessels, take 10,418 bbls., average 126 bbls. per vessel.

1889.—62 vessels, take 6,755 bbls., average 109 bbls. per vessel.

So far as the New England fleet are concerned, both in the Gulf and on the Nova Scotian and New England coasts, the mackerel season has been an unprecedentedly poor one, and the following table exhibits in a marked manner the continued decadence of the United States mackerel fishery. The returns not being yet available, the Canadian catch for 1889 is estimated, but that for the New England fleet is taken from the published returns of the Boston Fish Bureau, as stated in their circular of 13th December.

	1885.	1886.	1887.	1888.	1889.
Caught by U. S. vessels..... bbls..	330,000	80,000	78,000	40,000	17,794
Caught by Canadians..... bbls..	148,400	152,292	131,653	65,777	65,000
Total product.....	a 478,450	232,292	209,653	105,777	82,794

a Sic.

If from the above figures for United States vessels for 1888–89 we take the quantities quoted as being taken off the coasts of Canada, the remainder will represent the quantities obtained on the fishing grounds off the New England coasts. These remainders are: for 1888, 29,572 bbls., and for 1889 the minimum quantity of 11,219 bbls. Figures like these need no comment.

In Canada the fishing has remained about the same as last year, and the prospects are encouraging to this extent, that large quantities of small fish have been seen during the latter part of the season, which, if not destroyed in purse seines before reaching merchantable age, will go a long way towards restoring our fishery to its normal condition of late years. If not to its former degree of plenteousness.

Our Canadian fishery shows to great advantage when compared with the mackerel fishery of the United States, and it is safe to say that, without any great increase in the means of capture, our Canadian catch has been fully up to, if not in excess of, that of last year.

The habits of the fish seem to have changed completely; they no longer herd in large schools, and play about on the surface as they feed, but small quantities of fish are found almost everywhere. At one time this year fish could be raised at any point between Miscou Island and the Magdalens, making in the whole unquestionably a vast mass of fish, but far short of the multitudes which formerly frequented the waters of the Gulf.

I cannot help thinking that the apparent change in the habits of the fish is largely due to their diminished numbers, which would naturally make them more timid. The change, however, is not without its advantage, as it tells largely in favour of Canadian methods of fishing, the success of the hook-and-line fishing and the boat fishing inshore being quite marked during the past season.

In my report on the operations of the year 1888 I went very fully into the condition and prospects of the Canadian mackerel fishery,

and subsequent experience has only tended to confirm and strengthen the views expressed therein, viz., that the depletion of the mackerel fishery was largely due not only to the use of improper means of capture but to the use of those means at improper seasons.

The United States Government recognizing the importance of this fishery, has legislated very effectively to prohibit the use of the purse seine in their southern waters during the season when the mackerel are about to spawn, the law being that no mackerel caught in a purse seine between the first day of January and the first day of June in each year shall be permitted to be landed in the United States, thus using the machinery of the Customs Department to enforce a law for the protection of deep-sea fish on the high seas.

The United States fishermen, recognizing the fact that this law is a necessity, if there is to be any future for their mackerel fishery, loyally adhere to its provisions.

Owing, however, to the geographic position of our Canadian fishing grounds, a season which will protect spawning fish on the New England coasts will not protect them on those of Nova Scotia, and the season within the St. Lawrence is later still.

I would strongly urge upon your notice the advisability of endeavouring to make an arrangement with the Government of the United States for the preservation of the mackerel fishery. The best method of protecting the fishery would be the absolute prohibition of the use of the purse seine, and this prohibition could be made quite effectual by the passage of a law in Canada similar to that in force in the United States, but to extend over the whole year, and the extension of the United States term of prohibition to the whole twelve months. If this were done experimentally, say for a period of five years, the beneficial effects of the legislation would, I am sure, justify its enactment. But if it is thought that this measure is too drastic, then let the following fishing areas and close times be agreed upon and laws similar to that now in force in the United States be enacted for the protection of the areas.

First, the present close season or prohibition of the purse seine, to extend to all the waters of the north-west Atlantic. Second, that no purse seine shall be used north of the parallel of Cape Sable until after the first day of July in each calendar year. Third, that no purse seine shall be used within the waters of the Gulf of St. Lawrence until after the first day of August in each calendar year—the boundaries of the Gulf of St. Lawrence for the purposes of this law to be the line joining Bear Island and Eddy Point, Straits of Canso, and the lines joining Money Point Lighthouse, Cape Breton, with the lighthouse south end of St. Paul's Island, and thence to Cape Ray Lighthouse, Newfoundland. If similar laws are passed by the United States and Canada for the protection of these areas, no costly or complicated police system will be necessary: the machinery of the Customs Department in each country can easily and effectually enforce the law.

The above-named limits may be described as—

- 204 (1) The New England mackerel grounds; (2) The Nova Scotia mackerel grounds; (3) The North Bay ground, the latter name being that applied by the mackerel fishermen to the whole Gulf of St. Lawrence. These separate limits are easily defined, and no difficulty could arise in administering the law on the ground of diffi-

culty of defining a limit, and the divisions proposed are those which agree most nearly with the gradations of marine climate which govern the movements of these fish.

The destruction of these migratory fish before the spawning season must result in the depletion of the fishery, and if it is desired to prevent this destruction by wholesale, the abolition of the use of the purse seine in the above limits, and for the periods mentioned, is the minimum of protection that must be insisted on; for it is a fact, capable of demonstration quite simply, that spawning or gravid fish are taken on the Nova Scotian coast up till 1st. July, and though the spawning season in the southern part of the Gulf is pretty well over by 20th. July in an average year, we have in these waters so much fluctuation in marine climate that there is great variation in the period of spawning. I have therefore fixed on 1st. August as the date of commencement of the purse seining, to allow for a late season and to cover the more northerly portions of these waters where the spawning season is later.

Many of the masters of the United States fishing vessels admit that the unrestrained use of the purse seine has ruined the mackerel fishery, but some of them being part owners of vessels and gear are indisposed to support a measure, the passage of which would practically wipe out a portion of their capital for a time. In Canada the sum invested in these seines is comparatively small, and I do not think that there would be any real opposition from Canadians to the enactment of the proposed laws for the protection of the mackerel. In fact, I consider that continued comparative productiveness of the Canadian mackerel fishing grounds as compared with those on the New England coasts is largely due (1) to the protection afforded to fishermen, by securing the inshore fishing grounds from molestation and continual harassment by a large fleet of foreign fishermen, thus affording the fish an area in which to spawn comparatively undisturbed; and (2) to the fact that Canadian fishermen have not so extensively adopted the use of the purse seine as a means of capture.

One of the best arguments in favour of the abolition of the purse seine is that many of the most experienced fishermen are already discarding the use of it, and all are relegating it to a secondary place in their operations. In the past, the mackerel schooner stood off and on, with one, two, or even three men at the masthead, looking for fish, and when a school was sighted the seine boat was manned and the school surrounded; then, after the seine was pursed the schooner sailed up alongside the boat. To-day the *modus operandi* is entirely changed. The vessel now carries many barrels of bait, herrings, porgies and clams; these are ground up in a mill and mixed with water to the consistency of thin porridge; the vessel still carries a man at the masthead, but instead of sailing to and fro, she is allowed to drift slowly over the surface of the sea and the toll bait is constantly thrown over, two or three men meanwhile have their lines over the side, and if the fish rise to the bait and are taken on the hooks, all hands immediately get their lines over, and if the fish show in any number the bait is kept going over steadily, the seine boat is manned and the seine quietly swept round both vessels and fish, and when the net is pursed up those left on board run the head of the jib up, the vessel pays off and rides easily and harmlessly over the cork rope, the haul occasionally amounting to a few barrels; but all the

fishermen seem to admit that after sweeping the seine they have to change their ground, whilst they might have continued hooking successfully for some time longer had they not made the haul of the seine.

This purse seine fishing is in one sense like prospecting for gold or boring for oil, it being purely a speculative business, in which there still certainly remain a few prizes, but in which there are very many blanks; but each crew looks forward to making a big haul, and not to the continuous work which the hook and line fishing imposes on the men. As an instance of the prizes made, one vessel, the "Emma W. Brown," of Gloucester, got one hundred and sixty barrels of sea-packed mackerel at a single haul of her seine, which, at the extraordinary prices which have prevailed, would mean a take worth nearly four thousand dollars, or, say, upwards of one hundred dollars per man.

Another vessel, the "Mayflower" of Gloucester, made a somewhat similar haul, but these were the only two fortunate schooners in the whole fleet; yet the effect of these two hauls was to keep many of the fleet down on our coasts for some weeks later than they otherwise would have been.

One marked and of late years somewhat unusual feature of this season's fishing was the run of fine mackerel which struck in on the Nova Scotia coasts during the earlier half of November. These were exceptionally large and fine fish, and would, in some instances that come under my notice, run from 130 to 160 fish to the packed barrel. I estimate that about three thousand barrels were taken of this fall run; and as many of them were marketed fresh in ice, this run was worth nearly sixty thousand dollars to the fishermen. In some parts of the coast this lot of fish when netted were considerably damaged by squid, which actually eat the fish after they are meshed in the nets, never totally consuming a whole fish, but eating a piece out of one and then testing the flavour of a second, till in some instances quite a serious proportion of the fish were damaged.

The Canadian mackerel net fishery by boats from the shore, and the net fishery by small schooners, requires regulation. This subject will be dealt with more fully in another part of the report. Suffice it to say, that the two great points which it is desirable to attain are, first, the marking with registered marks all nets or other fishing buoys, and second, the absolute prohibition of day fishing by drift nets, say between the hours of 8 a. m. and 5 p. m.

In concluding these remarks on the mackerel fishery, I would state again that the additional experience which I have acquired only confirms my opinion as to the desirability, almost the necessity, of the prohibition, or at any rate the limitation, of the use of the purse seine.

To be really effectual, any arrangement must be of an international character; and I am of opinion that the majority of both Canadian and United States' fishermen would be willing to accept some such arrangement as that suggested, at any rate tentatively, for a  
 205 period of five years, and they would readily admit that, whilst it might in the first instance be the occasion of loss to those of them who owned their seines and vessels, some such regulation of the fishing is most desirable.



No. 18.—1908, July 8: *Letter, Mr. Whitelaw Reid, United States Ambassador in London, to the British Secretary of State for Foreign Affairs.*

AMERICAN EMBASSY,  
London, July 8th, 1908.

SIR, Under instructions from my Government I have the honour to draw the attention of His Majesty's Government to a project for providing alternative cable communication between the United States and Alaska.

At present the cable extends from Seattle to Sitka, a distance of about 1,100 miles, and from the latter point cables extend to Valdez on the southern coast of Alaska, and to Juneau and other points on the inside passage. The cable from Seattle to Sitka affords the only means of communicating directly with Alaska from the United States, and is, of course, subject to occasional interruption. When so interrupted, communication with Alaska is cut off except through the Canadian land lines, which is not only a very expensive means of communication, but also in winter exceedingly uncertain.

The practice is in all cases for important cable lines to be in some ways duplicated, preferably by routes which differ, and thus to prevent, as far as practicable, interruption of communication from any single cause.

From the map of Alaska, which I enclose, it will be seen that the cable from Sitka eastwards extends down as far as Ketchikan on the inside passage to Alaska. A cable which could be laid from Gray's Harbour, Washington, northward through Hecate Strait, east of the Queen Charlotte Islands, across Dixon Entrance and up into the passage to Ketchikan, would provide such an alternative means of communication and reasonably ensure continuous telegraphic service to Sitka and beyond.

It will be noted, however, that Hecate Strait and Dixon Entrance are British waters, and before the project set forth above can be proceeded with it is desired to ascertain whether His Majesty's Government would have any objection to the laying of such a cable in the waters proposed.

In this connection, I venture to draw your attention to a note sent by Lord Lansdowne to Mr. Choate on the 20th of March 1902 in reply to an application by General Greely of the United States Army for leave to land a cable in British North Borneo, in which Lord Lansdowne states that the Government of Great Britain "will not as a general rule grant right to land cables in its territory to foreign Governments, but that it would be glad under certain conditions to see cable connections made between the Philippine Islands and British North Borneo by a private company."

In this case, therefore, it is hoped that the open and extensive character of the waters of Hecate Strait and Dixon Entrance, and the fact that no landing is desired on British Territory may permit a favourable consideration of this matter, and I am accordingly instructed to ask whether the facilities desired could be granted.

I have the honour to be, with the highest consideration, Sir, your most obedient humble servant,

WHITELAW REID.

The Right Hon<sup>ble</sup> Sir EDWARD GREY, Bt.,  
&c. &c. &c.

Enclosure: Map of Alaska.

No. 19.—1908, *September 26: British Order in Council.*

AT THE COURT AT BALMORAL,  
*The 26th day of September, 1908.*

Present, The King's Most Excellent Majesty  
His Royal Highness the Prince of Wales  
His Royal Highness the Duke of Connaught and Strathearn  
Secretary Sir Edward Grey  
Sir Dighton Probyn.

Whereas under the provisions of Article I. of a Convention concluded at London on the 20th day of October, 1818, the inhabitants of the United States of America have the liberty of taking, drying and curing fish in common with British subjects on certain parts of the coasts of Newfoundland:

And whereas, by Section I. of an Act passed in the fifty-ninth year of His late Majesty King George III., it is enacted that it shall and may be lawful for His Majesty by and with the advice of His Majesty's Privy Council, by any Order or Orders in Council, to be from time to time made for that purpose, to make such regulations and to give such directions, orders and instructions to the Governor of Newfoundland, or to any officer or officers on that station, or to any person or persons whomsoever, as shall or may be from time to time deemed proper and necessary for the carrying into effect of the purposes of the said Convention with relation to the taking, drying and curing of fish by inhabitants of the United States of America, in common with British subjects within the limits set forth in the said Article of the said Convention, any Act or Acts of Parliament, or any law, custom, or usage to the contrary notwithstanding:

And whereas by an Order in Council made on the 9th day of September, 1907, in pursuance of the powers vested in His Majesty by the said Act, certain orders and directions were given with relation to the taking, drying and curing of fish by the inhabitants of the United States of America in common with British subjects on the coasts of Newfoundland:

And whereas, it is expedient that the said Order of the 9th day of September, 1907, should be revoked:

Now, therefore, His Majesty, in pursuance of the powers vested in His Majesty by Section I. of the Act 59 George III., Chapter 38, by and with the advice of His Majesty's Privy Council, is pleased to order and it is hereby ordered as follows:—

I. The said Order of His Majesty in Council, bearing date the 9th day of September, 1907, is hereby revoked, without prejudice to anything lawfully done thereby.

II. This Order shall commence and come into operation forthwith.

III. The Governor of Newfoundland, His Majesty's Senior Naval Officer on the Newfoundland Station, all Judges, Magistrates, Justices of the Peace, Constables, and all other persons whatsoever in Newfoundland, shall take notice thereof and govern themselves accordingly.

A. W. FITZROY.

No. 20.—1909, March 15 and 23rd; Notes exchanged between the Ministry of Foreign Affairs of Colombia and the United States Legation in reference to Article VI of the Cortés-Root Treaty.

MINISTERIO DE RELACIONES EXTERIORES,  
Bogotá, Marzo 15 de 1909.

Señor MINISTRO: Cuando el Gobierno de Colombia autorizó á su Representante en Washington para que aceptara el artículo VI del Tratado con el Gobierno de los Estados Unidos, suscrito el día 9 de Enero último, artículo que concedía á los Estados Unidos el uso de todos los puertos de la República que estén abiertos al comercio, como lugares de refugio, para cualesquiera buques que estén empleados en la empresa del Canal y para todos los buques en desgracia que pasen ó se dirijan al Canal y que busquen abrigo ó anclaje en dichos puertos, quedando este permiso sujeto en tiempo de guerra á las leyes de la neutralidad que sean aplicables al caso, lo hizo en el supuesto de que era única y exclusivamente el derecho de refugio reconocido por el Derecho Internacional el que se concedía, sujeto á las prácticas que el mismo Derecho Internacional establece.

Comoquiera que algunos de los honorables Diputados y otros ciudadanos de este país ven en la redacción un poco obscura de este artículo un inconveniente para la aprobación del pacto en referencia me permito suplicar á Vuestra Excelencia que se sirva pedir telegráficamente al Departamento de Estado la autorización necesaria para firmar un protocolo ó nota aclaratoria del citado artículo VI, en que conste que el uso concedido por Colombia por el referido artículo debe entenderse únicamente como un derecho de refugio y como un favor inocente para los buques en circunstancias calamitosas (*relâche forcée*), tal como lo reconoce el Derecho Internacional y que queda sujeto á las condiciones y á las prácticas establecidas por el mismo, sin mengua alguna de la soberanía colombiana en sus puertos.

Así pues ese uso inocente que en calidad de refugio se estipula no significa de ningún modo derecho ó servidumbre que limitar pudiera el absoluto ejercicio del dominio que Colombia tiene sobre sus puertos, radas, bahías, golfos y mares territoriales, ni coarta el irrestricto imperio de sus leyes sobre ellos, ni da tampoco á los Estados Unidos facultad para ejercer jurisdicción, ni para ejecutar obra alguna como muelles, dársenas ú otras semejantes.

Es Subentendido que la estipulación contenida en el mismo artículo VI de que tales buques estarán exentos de todo pago por derechos de anclaje ó tonelaje á la República de Colombia, queda subsistente.

Aprovecho con placer la presente oportunidad para reiterar á Vuestra Excelencia, junto con mis agradecimientos anticipados, la expresión de mi más alta y más distinguida consideración.

FRANCISCO JOSE URRUTIA.

A Su Excelencia el señor THOMAS C. DAWSON,  
*Enviado Extraordinario y Ministro  
Plenipotenciario de los Estados Unidos*

92909°—S. Doc. 870, 61-3, vol 7—27

[Translation.]

MINISTRY OF FOREIGN AFFAIRS,  
Bogotá, March 15, 1909.

MR. MINISTER,

When the Government of Colombia empowered its representative at Washington to accept Article VI of the Treaty with the Government of the United States signed on the ninth day of 207 January last, which article granted to the United States the use of all the ports of the Republic that may be open to trade, as places of refuge for any ships employed at the canal and for all vessels in distress that pass through or steer for the canal and that may seek shelter or anchorage in the said ports, this permission being subject in time of war to the laws of neutrality applicable in such a case, it did so on the supposition that the right of refuge conceded was solely and exclusively that recognized by International Law and subject to the practices which, the same International Law establishes.

Nevertheless, since some of the honourable Members of Parliament and other citizens of this country see in the slightly obscure wording of this article an obstacle to the approval of the compact in question, I take the liberty of begging your Excellency to be good enough to ask the Department of State by telegraph for the authority necessary to sign a protocol or a note explanatory of this said Article VI, by which it may be clear that the enjoyment granted by Colombia in the said article should be understood solely as a right of refuge and as an innocent favour to ships in difficult circumstances (*relâche forcée*), such as International Law recognizes and that this enjoyment remains subject to the conditions and practices established by the same, without any diminution of the sovereignty of Colombia in her ports.

In this manner then that innocent enjoyment stipulated for under the name of harbourage in no way signifies right or servitude which could limit the absolute exercise of the sovereignty which Colombia possesses over her ports, roadsteads, bays, gulfs, and territorial seas, nor limits the unrestricted dominion over them of her laws, nor does it give to the United States power to exercise jurisdiction or to carry out any work such as piers, repairing stations or other works of a similar nature.

It is tacitly understood that the stipulation contained in the same Article VI whereby such ships will be freed from any payment to the republic of Colombia for rights of anchorage or tonnage, remains in force.

I improve with pleasure the present opportunity to offer anew to your Excellency, with my thanks in anticipation, the expression of my highest and most distinguished consideration.

FRANCISCO JOSÉ URRUTIA.

To his Excellency MR. THOMAS C. DAWSON,  
*Envoy Extraordinary and Minister  
Plenipotentiary of the United States.]*

AMERICAN LEGATION,  
*Bogotá, March 23, 1909.*

MR. MINISTER: In reference to your Excellency's note of March fifteenth, in which you state your Government's understanding of the meaning of Art. VI. of the Root-Cortes Treaty of January 9th, 1909, I have the honour to inform Your Excellency that I have communicated its contents to my Government by telegraph, and am in receipt of instructions in regard thereto.

It gives me great satisfaction to manifest to Your Excellency that I am authorised to declare that the United States Government's understanding of the meaning of the said Article is the same as that by the Colombian Government, as stated in Your Excellency's note. My Government understands that the first part of Article VI. does nothing more than recognise the long standing doctrine of International Law, concerning friendly shelter to vessels in stress or need, plus a gracious waiver on the part of the Colombian Government of the anchorage and tonnage dues which Colombia could rightfully impose by virtue of her sovereignty over such ports.

Except for such waiver of anchorage and tonnage dues, the said Article is not intended to, and does not, involve any breach of Colombia's sovereignty over her ports, nor affect the unlimited jurisdiction of Colombian Laws over them, nor give to the United States any right to exercise jurisdiction in them, nor to build any wharves, arsenals, or the like.

I improve the opportunity to offer to Your Excellency the assurances of my most distinguished consideration.

(Signed) T. C. DAWSON.

His Excellency, Dr. FRANCISCO JOSÉ URRUTIA,  
*Minister for Foreign Affairs.*



## STATUTES, PROCLAMATIONS, RULES, ORDERS, &amp;C.

## GREAT BRITAIN.

No. 1.—1662: *Extract from British Statute, 13-14 Charles II, Cap. 11.*

An Act for preventing Frauds, and regulating Abuses in his Majesty's Customs.

“Forasmuch as it appears, that several unlawful and indirect Means and Devices are daily put in Practice, to export and import Goods and Merchandizes prohibited by the Laws and Statutes of this Kingdom, as also to defraud the King's most Excellent Majesty of his Dues, Customs and Subsidies, as well by secret and deceitful Designs, as by open Force and Violence used against the King's Majesty's Officers employed in the Affairs of the Customs:”

II. For the better preventing of which Frauds and Violences in Time to come, it is enacted and ordained by the King's most Excellent Majesty, by and with the Advice and Consent of the Lords Spiritual and Temporal, and Commons, in Parliament assembled, and be it enacted and ordained by the Authority thereof, That no Ship or Vessel arriving from the Parts beyond the Seas, shall be above three Days coming from *Gravesend* to the Place of her Discharge (within the River of *Thames*) without touching or staying at any Wharf, Key or Place adjoining to either Shore between *Gravesend* and *Chester's Key*, (unless apparently hindred by contrary Winds, Draught of Water, or other just Impediment to be allowed by such Person or Persons as are or shall be appointed by his Majesty for managing the Customs, the Collectors Inwards, or other principal Officers of the Customs;) (2) and then or before, the Master or Purser (for that Voyage) of such Ship or Vessel, shall make a just and true Entry upon Oath of the Burthen, Contents and Lading of every such Ship or Vessel, with the particular Marks, Numbers, Qualities and Contents of every Parcel of Goods therein laden, to the best of his Knowledge; also where and in what Port she took in her Lading, of what Country built, how manned, who was Master during the Voyage, and who are Owners thereof; (3) and in all Out-Ports or Members, to come directly up to the Place of Unlading, as the Condition of the Port requires and will admit, and making Entries, as aforesaid, upon the Penalty of the Forfeiture of one hundred Pounds.

III. And be it further enacted by the Authority aforesaid, That no Captain, Master, Purser, or any other Person or Persons taking Charge of any Ship or Vessel bound for the Parts beyond the Seas, or into the Kingdom of *Scotland*, whether the same Ship or Vessel shall have Commission from or belong unto the King's Majesty that now is, his Heirs or Successors, or shall belong to or have Commission from any foreign Prince or State, or otherwise, shall take in, or suffer

to be taken into, or laden aboard any such Ship or Vessel, any *English* Goods, Wares or Merchandize, to be exported into the Parts beyond the Seas, or into the Kingdom of *Scotland*, until such Captain, Master, Purser or other Person as aforesaid, shall have entered such Ship or Ships in the Book of the Commissioners, Customer or Collector and Comptroller Outwards of such Port where he shall load or take in Goods, together with the Name of such Captain or Master, the Burden of such Ship or Vessel, the Number of Guns and Ammunition she carries, and to what Port or Place she intends to pass or sail; (2) and before he or they shall depart with his or their Ship or Vessel out of such Port or Place, shall bring and deliver unto the said Person or Persons which are or shall be appointed by his Majesty for managing the Customs, the Customer or Collector and Comptroller of such Port or Place, a Content in Writing under his or their Hands, of the Names of every Merchant, and other Person or Persons that shall have laden and put on board any such Ship or Vessel, any such Goods or Merchandize, together with the Marks and Numbers of such Goods and Merchandize; (3) and shall likewise publicly in the open Custom-house, upon his corporal Oath, to the best of his Knowledge, have answered to such Question or Questions as shall be demanded of him by the said Person or Persons which are or shall be appointed by his Majesty for managing the Customs, the Customer or Collector and Comptroller, or their Deputies, concerning such Goods and Merchandize as shall be aboard such Ship or Vessel; (4) upon Pain of Forfeiture of one hundred Pounds: (5) And that no such Captain, Master, Purser, or other Person or Persons taking Charge of any Ship or Vessel of War, as aforesaid, wherein any Goods, Wares or Merchandizes shall have been laden or brought from the Ports beyond the Seas, or out of the Realm of *Scotland*, shall unload or put on board any Lighter, Boat or Bottom, or lay on Land, or suffer to be discharged or put into any Lighter, Boat or Bottom, or to be laid on Land, out of any Ship or Vessel, as aforesaid, any Goods, Wares or Merchandize whatsoever, before such Captain, Master, Purser, or other Person taking Charge of the Ships or Merchants Goods for that Voyage, as aforesaid, shall have signified and declared in Writing under his or their Hands, unto the Person or Persons which are or shall be appointed by his Majesty for managing

210 the Customs, the Customer or Collector and Comptroller inwards of the Port where he arriveth, the names of every Merchant or Lader of any Goods or Merchandizes aboard the said Ship or Vessel, together with the Number and Marks, and the Quantity and Quality of every Parcel of Goods and Merchandizes, to the best of his Knowledge, and shall have answered upon his or their corporal Oath, to such Questions concerning such Goods and Merchandizes, as shall be publicly administered unto him in the open Custom-house, by such Person or Persons which are or shall be appointed for managing the Customs, Customer or Collector and Comptroller, or their Deputies, and shall be liable to all Searches and other Rules which Merchants Ships are subject unto, by the Usage of his Majesty's Custom-house (Victualling-Bills and Entering excepted) upon Pain to forfeit one hundred Pounds: (6) and upon Refusal to make such Entries as aforesaid, as well outwards as inwards, the said Person or Persons which are or shall be appointed for managing the Customs, and Officers of his Majesty's Customs, and their Deputies,



shall and may freely enter and go on board all and every such Ship or Vessel of War, and bring from thence on shore into his Majesty's Store-house belonging to the Port where such Ship shall be, all goods and Merchandizes prohibited or uncustomed, which shall be found aboard any such Ship, as aforesaid.

IV. And be it hereby enacted, That the said Person or Persons which are or shall be appointed for managing the Customs, and Officers of his Majesty's Customs, and their Deputies, are hereby authorised and enabled to go and enter aboard any Ship or Vessel, as well Ships of War as Merchant-Ships, and from thence to bring on shore all Goods prohibited or uncustomed, except Jewels, if they be outwards bound; (2) and if they be Ships or Vessels inwards bound, from thence to bring on shore into his Majesty's Store-house, as aforesaid, all small Parcels of fine Goods, or other Goods, which shall be found in Cabbins, Chests, Trunks or other small Package, or in any private or secret Place, in or out of the Hold of the Ship or Vessel, which may occasion a just Suspicion that they were intended to be fraudulently conveyed away; (3) and all other Sorts of Goods whatsoever, for which the Duties of Tonnage and Poundage were not paid or compounded for within twenty Days after the first Entry of the Ship, to be put and remain in the Store-house aforesaid, until his Majesty's Duties thereupon be justly satisfied, unless the said Person or Persons which are or shall be appointed by his Majesty for managing the Customs, and Officers of the Customs, shall see just Cause to allow a longer Time, and that the said Person or Persons which are or shall be so appointed to manage the Customs, and the Officers of the Customs, and their Deputies, may freely stay and remain aboard, until all the Goods are delivered and discharged out of the said Ships or Vessels: (4) And if any Master, Purser or Boatswain, or other taking charge in any Ship or Vessel, or any other Person whatsoever, shall suffer any Truss, Bale, Pack, Fardel, Cast or other Package to be opened aboard the said Ship or Vessel, and the Goods therein to be imbezilled, carried away, or put in any other Form or Package, after the Ship comes into the Port of her Discharge, in every such case the said Master, Purser, Boatswain or others, shall forfeit the sum of one hundred Pounds.

V. And be it further enacted by the Authority aforesaid, That in case after the Clearing of any Ship or Vessel, by the Person or Persons which are or shall be appointed by his Majesty for managing the Customs, or any their Deputies, and discharging the Watchmen or Tidesmen from attendance thereupon, there shall be found on board such Ship or Vessel, any Goods, Wares or Merchandizes, which have been concealed from the Knowledge of the said Person or Persons which are or shall be so appointed to manage the Customs, and for which the Custom, Subsidy and other Duties due upon the Importation thereof, have not been paid; then the Master, Purser or other Person taking charge of such Ship or Vessel, shall forfeit the Sum of one hundred Pounds; (2) And it shall be lawful to or for any Person or Persons, authorised by Writ of Assistance under the Seal of his Majesty's Court of Exchequer, to take a Constable, Headborough or other publick Officer inhabiting near unto the Place, and in the Day-time to enter, and go into any House, Shop, Cellar, Warehouse or Room, or other Place, and in case of Resistance, to break open Doors, Chests, Trunks and other Package, there to seize, and

from thence to bring, any Kind of Goods of Merchandize whatsoever, prohibited and uncustomed, and to put and secure the same in his Majesty's Store-house, in the Port next to the Place where such Seizure shall be made.

VI. And for the better Increase of Shipping and Navigation, Be it further enacted, That the Collectors and other Officers of his Majesty's Customs in all the Ports of *England*, shall forthwith give an Account unto the Collector and Surveyor in the Port of *London*, (appointed by his Majesty for all Duties and Matters relating to a late Act, intituled, *An Act for encreasing and encouraging of Shipping and Navigation*,) of all foreign-built Ships in their Ports, owned and belonging to the People of *England*, of what Built and Burthen they are, for which Certificates have been made according to the said Act, and that the said Collector and Surveyor shall make a true and perfect List of all such Ships attested under their Hands, and transmit the same into his Majesty's Court of Exchequer, on or before the Month of *December* in the Year one thousand six hundred sixty and two, there to remain upon Record: (2) And that no foreign-built Ship (that is to say) not built in any of his Majesty's Dominions of *Asia*, *Africa* or *America*, or other than such as shall (*bona fide*) be bought before the first of *October* one thousand six hundred sixty and two next ensuing, and expressly named in the said List, shall enjoy the Privilege of a Ship belonging to *England* or *Ireland*, although owned or manned by *English* (except such Ships only as shall be taken at Sea by Letters of Mart or Reprisal, and Condemnation made in the Court of Admiralty, as lawful Prize) but all such Ships shall be deemed as Aliens Ships, and be liable unto all Duties that Aliens Ships are liable unto by virtue of the said Act for Increase of Shipping and Navigation. (3) And whereas it is required by the said Act, that in sundry cases the Master and three Fourths of the Mariners are to be *English*, it is to be understood, that any of his Majesty's Subjects of *England*, *Ireland*, and his Plantations, are to be accounted *English*, and no others, and that the Number of Mariners be accounted according to what they shall have been during the whole Voyage. (4) And whereas of late some of the Persons appointed by his Majesty for managing the Customs, and the Officers of the Customs and their Deputies, have been hindred, affronted, abused, beaten and wounded, to the Hazard of their Lives, in the due

Execution of their several Trusts and Services in their respective Places, by armed Companies and Multitudes of Men, and

211 Goods prohibited and uncustomed have by Force and Violence, as well by Land as by Water, been forcibly carried and conveyed away: (5) Be it enacted by the Authority aforesaid, That where any Officer or Officers shall be by any Person or Persons, armed with Club, or any manner of Weapon, forcibly hindered, affronted, abused, beaten or wounded as aforesaid, either on board any Ship or Vessel, or upon the Land or Water, in the due Execution of their Office, all and every Person and Persons so resisting, affronting, abusing, beating or wounding the said Officer or Officers, or their Deputies, or such as shall act in their Aid or Assistance, shall by the next Justice of Peace, or other Magistrate, be committed to Prison, there to remain till the next Quarter-Sessions: (6) And the Justices of the Peace of the said Quarter-Sessions shall and are hereby impowered to punish the Offender by Fine, not exceeding one

hundred Pounds, and the Offender is to remain in Prison till he be discharged by order of the Exchequer, both of the Fine and of the Imprisonment, or discover the Person that set him on work, to the End he may be legally proceeded against.

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“XV. And forasmuch as it doth appear by daily Experience, That there are great Practices and Combinations between the Importers and Owners of Goods and Merchandizes, and the Seizers and Informers, with Design and Intent to defraud the Force of the Law, and his Majesty of his Duties and Customs;” (2) Be it enacted by the Authority aforesaid, That no Ship or Ships, Goods, Wares or Merchandize, shall be seized as forfeited, for or by reason of unlawful Importation or Exportation, into or out of this Kingdom of *England*, Dominion of *Wales* or Port and Town of *Berwick*, or any the Ports, Members or Creeks thereunto belonging, or for not Payment of any Customs or Subsidies now due or hereafter to be due and payable to his Majesty, but by the Person or Persons who are or shall be appointed by his Majesty to manage his Customs, or Officers of his Majesty’s Customs for the Time being, or such other Person or Persons as shall be deputed and authorised thereunto by Warrant from the Lord Treasurer or Under-Treasurer, or by special Commission from his Majesty under the Great or Privy Seal: (3) And if any Seizure shall hereafter be made by any other Person or Persons whatsoever for any the Causes aforesaid, such Seizure shall be void and of none Effect; any Statute, Law, Act or Provision to the contrary in any wise notwithstanding.

XVI. And be it further enacted by the Authority aforesaid That in every Action, Suit, Indictment, Information or Prosecution, wherein or whereby the Person or Persons which are or shall be appointed by his Majesty for managing his Customs or the Officers of his Majesty’s Customs, or any Officer or Officers, Person or Persons authorised by his Majesty to put in Execution the Act of Parliament, *For increasing and encouraging of Navigation*, their Deputies or Servants, or any others acting in Aid of them, have been, are or shall be sued, indicted, prosecuted or molested, it shall be lawful for all and every the said Persons, their Heirs, Executors and Administrators, to plead the General Issue, and to give this or the aforesaid Acts of Parliament relating to the Customs and Navigation, in Evidence, in any of his Majesty’s Courts of Justice, or other Courts where the said Matter shall be depending; and the Judges of the said Courts are hereby strictly enjoined and required to admit the same, and to acquit and indemnify them and every of them of and from all such Suits, Indictments, Informations or Prosecutions, for or concerning any matter or thing acted or done in the due and necessary Performance and Execution of their respective Trusts and Employments therein.

XVII. Be it hereby also enacted, for avoiding of fraudulent Compositions, That if any Seizure Informer or Officer as aforesaid, shall not prosecute to effect for the bringing to Trial and Condemnation the Ships, Goods and Merchandize by them seized or informed against; That then, and in every such Case, it shall be lawful to or for any of the Person or Persons which are or shall be appointed by his Majesty for managing his Customs, or the Officers of the Cus-

toms, or other Person or Persons deputed by them, or thereunto authorized by the Lord-Treasurer or Under-Treasurer, to make Seizure of or inform against such Goods and Merchandize, or bring his Action for the same by way of *Devenerunt*, and that they shall be esteemed and adjudged in Law as the true first Informers and Seizers, and have the Benefit of such Informers or Seizers; any Law, Statute, Act or Usage to the contrary in any wise notwithstanding:

XVIII. And that no Informer or Officer be suffered to compound under one Third of the appraised Value, upon Loss of his Office:

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XXVIII. And be it further enacted, That all Actions, Suits and Informations, to be had and commenced upon the Act *For encouraging and increasing of Shipping and Navigation*, or any Clause or Article therein, may be entred and prosecuted in his Majesty's Court of Exchequer at *Westminster*; (2) That upon all such Suits and Informations to be brought upon the Act of Tonnage and Poundage, and the Act aforesaid, or any other Act or Statute concerning the Importation of Goods or Merchandize from the Parts beyond the Seas, If the Property thereof be claimed by any Person or Persons as the Importer thereof; in such Case *Onus Probandi* shall lie upon the Owner or Claimer thereof.

XXIX. Provided, That in case the Seizure or Information shall be made upon any Clause or Thing contained in the late Act, intituled, *An Act for the encouraging and increasing of Shipping and Navigation*, that then the Defendant or Defendants shall on his or their Request have a Commission out of the High Court of Chancery to examine Witnesses beyond the Seas, and have a competent Time allowed for the Return thereof, before any trial shall be had upon the Case, according to the Distance of Place where such Commission or Commissions are to be executed, and that the Examination of Witnesses so returned shall be admitted for Evidence in Law at the Trial, as if it had been given *Viva voce* by the Examinee in Court; any Law, Statute or Usage to the contrary in any wise notwithstanding.

XXX. And be it also enacted and ordained by the Authority aforesaid, That no Writ of Delivery shall be granted out of the Court of Exchequer for Goods seized, but upon good security, and that for Goods perishable only, or in Cases where the Informer  
212 shall defer or delay his coming to as speedy a Trial as the Course of that Court will permit, and shall be thereby ordered and directed.

XXXI. And be it further enacted by the Authority aforesaid, That one Moiety of all the Forfeitures before in this Act mentioned and appointed shall be to the King's Majesty, his Heirs and Successors, and the other Moiety to such Person or Persons as shall seize or sue for the same by Bill, Plaint or Information in his Majesty's Court of Exchequer, or any other his Majesty's Courts of Record, wherein no Essoin, Protection or Wager of Law shall be allowed.

XXXII. And be it further enacted and ordained, That all Officers belonging to the Admiralty, Captains and Commanders of Ships, Forts, Castles, and Block-houses, as also all Justices of the Peace, Mayors, Sheriffs, Bailiffs, Constables and Headboroughs, and all the King's Majesty's Officers, Ministers and Subjects whatsoever whom it may concern, shall be aiding and assisting to all and every Person

and Persons which are or shall be appointed by his Majesty to manage his Customs, and the Officers of his Majesty's Customs, and their respective Deputies, in the due Execution of all and every Act and Thing in and by this present Act required and enjoined, and all such who shall be aiding and assisting unto them in the due Execution hereof, shall be defended and saved harmless by Virtue of this Act.

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XXXVI. Provided always, That it shall and may be lawful to export, from any of his Majesty's Dominions Fish into any of the Ports of the *Mediterranean* Sea aforesaid, in any *English* Ship or Vessel whatsoever, provided that one Moiety of her full Lading be Fish only, and in such Case to import any Wares or Merchandize in the same Ship for that Voyage without paying any other Rates or Duties of Tonnage or Poundage for the same, than were heretofore accustomed.

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No. 2.—1663: *Extract from British Statute, 15 Charles II, Cap. 7.*

An Act for the Encouragement of Trade.

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“V. And in regard his Majesty's Plantations beyond the Seas are inhabited and peopled by his Subjects of this his Kingdom of *England*; for the Maintaining a greater Correspondence and Kindness between them, and keeping them in a firmer Dependence upon it, and rendring them yet more beneficial and advantageous unto it in the further Employment and Increase of *English* Shipping and Seamen, Vent of *English* Woollen and other Manufactures and Commodities, rendring the Navigation to and from the same more safe and cheap, and making this Kingdom a Staple, not only of the Commodities of those Plantations, but also of the Commodities of other Countries and Places, for the Supplying of them; and it being the Usage of other Nations to keep their Plantations Trade to themselves:”

VI. Be it enacted, and it is hereby enacted, That from and after the five and twentieth Day of *March* one thousand six hundred sixty-four, no Commodity of the Growth, Production or Manufacture of *Europe*, shall be imported into any Land, Island, Plantation, Colony, Territory or Place to his Majesty belonging, or which shall hereafter belong unto or be in the Possession of his Majesty, his Heirs and Successors, in *Asia*, *Africa* or *America*, (*Tangier* only excepted) but what shall be *bona fide*, and without Fraud, laden and shipped in *England*, *Wales*, or the Town of *Berwick* upon *Tweed*, and in *English* built Shipping, or which were *bona fide* bought before the first Day of *October* one thousand six hundred sixty and two, and had such Certificate thereof as is directed in one Act passed the last Sessions of this present Parliament, intituled, *An Act for preventing Frauds, and regulating Abuses in his Majesty's Customs*; and whereof the Master and three Fourths of the Mariners at least are *English*, and which shall be carried directly thence to the said Lands, Islands,

Plantations, Colonies, Territories or Places, and from no other Place or Places whatsoever; any Law, Statute or Usage to the contrary notwithstanding; (2) under the Penalty of the Loss of all such Commodities of the Growth, Production or Manufacture of *Europe*, as shall be imported into any of them from any other Place whatsoever, by Land or Water; and if by Water, of the Ship or Vessel also in which they were imported, with all her Guns, Tackle, Furniture, Ammunition and Apparel; one third Part to his Majesty, his Heirs and Successors; one third Part to the Governor of such Land, Island, Plantation, Colony, Territory or Place, into which such Goods were imported, if the said Ship, Vessel or Goods be there seized or informed against and sued for; or otherwise that third Part also to his Majesty, his Heirs and Successors; and the other third Part to him or them who shall seize, inform or sue for the same in any of his Majesty's Courts in such of the said Lands, Islands, Colonies, Plantations, Territories or Places where the Offence was committed, or in any Court of Record in *England*, by Bill, Information, Plaint or other Action, wherein no Essoin, Protection or Wager of Law shall be allowed.

VII. Provided always, and be it hereby enacted by the Authority aforesaid, That it shall and may be lawful to ship and lade in such Ships, and so navigated, as in the foregoing Clause is set down and expressed, in any Part of *Europe*, Salt for the Fisheries of *New-England* and *Newfoundland*, and to ship and lade in the *Madera's* Wines of the Growth thereof, and to ship and lade in the Western

Islands of *Azores* Wines of the Growth of the said Islands.  
213 and to ship and take in Servants or Horses in *Scotland* or *Ireland*, and to ship or lade in *Scotland* all Sorts of Victual of the Growth or Production of *Scotland*, and to ship or lade in *Ireland* all sorts of Victual of the Growth or Production of *Ireland*, and the same to transport into any of the said Lands, Islands, Plantations, Colonies, Territories or Places; any Thing in the foregoing Clause to the contrary in any wise notwithstanding.

VIII. And for the better Prevention of Frauds, be it enacted, and it is hereby enacted, That from and after the five and twentieth Day of *March* one thousand six hundred sixty and four, every Person or Persons, importing by Land any Goods or Commodities whatsoever into any the said Lands, Islands, Plantation, Colonies, Territories or Places, shall deliver to the Governor of such Land, Island, Plantation, Colony, Territory or Place, or to such Person or Officer as shall be by him thereunto authorized and appointed, within four and twenty Hours after such Importation, his and their Names and Surnames, and a true Inventory and Particular of all such Goods and commodities: (2) And no Ship or Vessel coming to any such Land, Island, Plantation, Colony, Territory or Place, shall lade or unlade any Goods or Commodities whatsoever, until the Master or Commander of such Ship or Vessel shall first have made known to the Governor of such Land, Island, Plantation, Colony, Territory or Place, or such other Person or Officer as shall be by him thereunto authorized and appointed, the Arrival of the said Ship or Vessel, with her Name, and the Name and Surname of her Master or Commander, and have shewn to him that she is an *English*-built Ship, or made good by producing such Certificate, as abovesaid, that she is a Ship or Vessel *bona fide* belonging to *England*, *Wales*, or the Town of *Berwick*, and navigated with an *English* Master, and three fourth

Parts of the Mariners at least *Englishmen*, and have delivered to such Governor or other Person or Officer a true and perfect Inventory or Invoice of her Lading, together with the Place or Places in which the said Goods were laden or taken into the said Ship or Vessel; (3) under the Pain of the Loss of the Ship or Vessel, with all her Guns, Ammunition, Tackle, Furniture and Apparel, and of all such Goods of the Growth, Production or Manufacture of *Europe*, as were not *bona fide* laden and taken in in *England*, *Wales*, or the Town of *Berwick*, to be recovered and divided in Manner aforesaid; (4) and all such as are Governors or Commanders of any the said Lands, Islands, Plantations, Colonies, Territories or Places (*Tangier* only excepted) shall before the five and twentieth Day of *March* one thousand six hundred sixty and four, and all such as shall hereafter be made Governors or Commanders of any of them, shall before their Entrance upon the Execution of such Trust or Charge, take a solemn Oath before such Person or Persons as shall be authorized by his Majesty, his Heirs and Successors, to administer the same; to do their utmost within their respective Governments or Commands, to cause to be well and truly observed what is in this Act enacted, in relation to the Trade of such Lands, Islands, Plantations, Colonies, Territories and Places, under the Penalty of being removed out of their respective Governments and Commands; (5) And if any of them shall be found, after the taking of such Oath, to have wittingly and willingly offended contrary to what is by this Act required of them, that they shall for such Offence be turned out of their Governments, and be incapable of the Government of any other Land, Island, Plantation or Colony; and moreover, forfeit the Sum of one thousand Pounds of lawful Money of *England*; the one Moiety to his Majesty, his Heirs and Successors; and the other Moiety to him or them that shall inform or sue for the same in any of his Majesty's Courts in any of the said Plantations, or in any Court of Record in *England*, wherein no Essoin, Protection, or Wager of Law shall be allowed.

IX. And it is hereby further enacted, That if any Officer of the Customs in *England*, *Wales*, or Town of *Berwick* upon *Tweed*, shall give any Warrant for, or suffer any Sugar, Tobacco, Ginger, Cotton-wool, Indigo, Speckle-wood or *Jamaica*-wood, Fustick or other Dying wood of the Growth of any of the said Lands, Islands, Colonies, Plantations, Territories or Places, to be carried into any other Country or Place whatsoever, until they have been first unladen *bona fide* and put on Shore in some Port or Haven in *England* or *Wales*, or in the Town of *Berwick*; That every such Officer for such Offence shall forfeit his Place, and the Value of such of the said Goods as he shall give Warrant for, or suffer to pass into any other Country or Place; the one Moiety to his Majesty, his Heirs and Successors; and the other Moiety to him or them that shall inform or sue for the same in any Court of Record in *England* or *Wales*, wherein no Essoin, Protection or Wager in Law shall be allowed.

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XVI. And for the Encouragement of the Herring and *North-Sea* Island, and *Westmoney* Fisheries, (2) be it enacted, and it is hereby enacted by the Authority aforesaid, That from and after the first Day of *August* which shall be in the Year of our Lord one thousand six hundred sixty and four, no Fresh Herring, Fresh Cod or Had-

dock, Coal-fish or Gull-fish, shall be imported into *England, Wales*, or the Town of *Berwick*, but in *English*-built Ships or Vessels, or in Ships or Vessels *bona fide* belonging to *England, Wales*, or the Town of *Berwick*, and having such Certificate thereof as is abovesaid, and whereof the Master and three Fourths at the least of the Mariners are *English*, and which hath been fished, caught and taken in such Ships or Vessels, and so navigated, and not being bought or had of any Strangers born, or out of any Strangers Bottoms, under the Pain of the Forfeiture of all such Herring, Cod, Haddock, Coal-fish or Gull-fish imported contrary to the true Intent and Meaning hereof, and of the Ship or Vessel in which it was imported; (3) one Moiety of which Forfeitures shall be to his Majesty, his Heirs and Successors; and the other Moiety to him or them that shall inform, seize or sue for the same, to be recovered by Bill, Plaint or other Action, wherein no Essoin, Protection or Wager in Law shall be allowed.

XVII. And be it further enacted, and it is hereby enacted by the Authority aforesaid, That for the following Sorts or Kinds of salted or dried Fish, which from and after the said first Day of *August* shall be imported into *England, Wales*, or the Town of *Berwick*, in any other Ship or Vessel than what is *English*-built or belonging to *England, Wales*, or Town of *Berwick*, and having such Certificate thereof as abovesaid, and whereof the Master and three Fourths of the Mariners at least are *English*, and not having been fished and caught in such Ships or Vessels, and so navigated, there  
214 shall be paid by way of Custom and Impost the several Sums of Money herein after particularly mentioned, (that is to say) For Cod-fish the Barrel, five Shillings; for Cod-fish the Last, containing twelve Barrels, three Pounds; for Cod-fish the Hundred, containing sixscore, ten Shillings; for Coal-fish the Hundred, containing sixscore, five shillings; for Lings the Hundred, containing sixscore, one Pound; for White Herrings the Last, containing twelve Barrels, one Pound sixteen Shillings; for Haddocks the Barrel, two Shillings; for Gull-fish the Barrel, two Shillings.

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No 3.—1676: *Extract from British Statute, 29 Charles II, Cap. 7.*

An Act for the better Observation of the Lord's Day, commonly called Sunday.

"For the better observation and keeping holy the Lord's Day, commonly called Sunday;" (2) Be it enacted by the King's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and of the Commons, in this present Parliament assembled, and by the authority of the same, that all the laws enacted and in force concerning the observation of the Lord's Day, and repairing to the church thereon, be carefully put in execution; (3) and that all and every person and persons whatsoever shall on every Lord's Day apply themselves to the observation of the same, by exercising themselves thereon in the duties of piety and true religion, publicly and privately; (4) and that no tradesman, artificer, workman, labourer, or other person whatsoever shall do or exercise any worldly labour, business or work of their ordinary callings, upon the Lord's Day, or any part thereof (works of necessity and charity



only excepted); (5) and that every person being of the age of fourteen years or upwards, offending in the premises, shall for every such offence forfeit the sum of five shillings; (6) and that no person or persons whatsoever, shall publicly cry, show forth, or expose to sale, any wares, merchandizes, fruit, herbs, goods or chattels whatsoever, upon the Lord's Day, or any part thereof, upon pain that every person so offending shall forfeit the same goods so cried or showed forth, or exposed to sale.

2. And it is further enacted, that no drover, horse-courser, waggoner, butcher, higler, their or any of their servants, shall travel or come into his or their inn or lodging upon the Lord's Day, or any part thereof, upon pain that each and every such offender shall forfeit twenty shillings for every such offence; (2) and that no person or persons shall use, employ or travel upon the Lord's Day with any boat, wherry, lighter or barge, except it be upon extraordinary occasion, to be allowed by some justice of the peace of the county, or head officer, or some justice of the peace of the city, borough or town corporate, where the fact shall be committed; (3) upon pain that every person so offending shall forfeit and lose the sum of five shillings for every such offence. (4) And that if any person offending in any of the premises shall be thereof convicted before any justice of the peace of the county, or the chief officer or officers, or any justice of the peace of or within any city, borough or town corporate where the said offences shall be committed, upon his or their view, or confession of the party, or proof of any one or more witnesses by oath (which the said justices, chief officer or officers is by this act authorized to administer) the said justice or chief officer or officers shall give warrant under his or their hand and seal, to the constables or church-wardens of the parish or parishes where such offence shall be committed, to seize the said goods cried, showed forth or put to sale as aforesaid, and to sell the same, and to levy the said other forfeitures or penalties, by way of distress and sale of the goods of every such offender distrained, rendering to the said offenders the overplus of the moneys raised thereby; (5) and in default of such distress, or in case of insufficiency or inability of the said offender to pay the said forfeitures or penalties, that then the party offending be set publicly in the stocks by the space of two hours. (6) And all and singular the forfeitures or penalties aforesaid shall be employed and converted to the use of the poor of the parish where the said offences shall be committed, saving only that it shall and may be lawful to and for any such justice, mayor or head officer or officers, out of the said forfeitures or penalties, to reward any person or persons that shall inform of any offence against this act, according to their discretions, so as such reward exceed not the third part of the forfeitures or penalties.

3. Provided, that nothing in this act contained shall extend to the prohibiting of dressing of meat in families, or dressing or selling of meat in inns, cooks' shops or victualling-houses, for such as otherwise cannot be provided, nor to the crying or selling of milk before nine of the clock in the morning or after four of the clock in the afternoon.

4. Provided also, that no person or persons shall be impeached, prosecuted or molested for any offence before-mentioned in this act, unless he or they be prosecuted for the same within ten days after the offence committed.

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215 No. 4.—1763: *Extract from British Statute, 4 George III, Cap. 15.<sup>a</sup>*

AN Act for granting certain Duties in the *British Colonies and Plantations in America*; for continuing, amending, and making perpetual an Act passed in the sixth Year of the Reign of his late Majesty King George the Second, (intituled, *An Act for the better securing and encouraging the Trade of His Majesty's Sugar Colonies in America*); for applying the Produce of such Duties; and of the Duties to arise by virtue of the said Act, towards defraying the Expences of defending, protecting, and securing the said Colonies and Plantations; for explaining an Act made in the twenty-fifth Year of the Reign of King Charles the Second, (intituled, *An Act for the Encouragement of the Greenland and Eastland Trades, and for the better securing the Plantation Trade*); and for altering and disallowing several Drawbacks on Exports from this Kingdom, and more effectually preventing the clandestine Conveyance of Goods to and from said Colonies and Plantations, and improving and securing the Trade between the same and *Great Britain*.

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“XXIII. And whereas by an Act of Parliament made in the twelfth Year of the Reign of King Charles the Second, intituled, *An Act for encouraging and increasing of Shipping and Navigation*, and several subsequent Acts of Parliament which are now in force, it is, amongst other Things, directed, that for every Ship or Vessel that shall load any Commodities, in those Acts particularly enumerated, at any *British* Plantation, being the Growth, Product, or Manufacture thereof, Bonds shall be given with one Surety, to the Value of one thousand Pounds, if the Ship be of less Burthen than one hundred Tons, and of the Sum of two thousand Pounds, if the Ship be of greater Burthen, that the same Commodities shall be brought by such Ship or Vessel to some other *British* Plantation, or to some Port in *Great Britain*; notwithstanding which, there is great Reason to apprehend such Goods are frequently carried to Foreign Parts, and landed there: And whereas great Quantities of Foreign Molasses and Syrups are clandestinely run on shore in the *British Colonies*, to the Prejudice of the Revenue, and the great Detriment of the Trade of this Kingdom and its *American Plantations*:” To remedy which Practices for the future, Be it further enacted by the Authority aforesaid, That from and after the twenty-ninth Day of September one thousand seven hundred and sixty-four, Bond and Security, in the like Penalty, shall also be given to the Collector or other principal Officer of the Customs at any Port or Place in any of the *British American Colonies* or Plantations, with one Surety besides the Master of every Ship or Vessel that shall lade or take on board there any Goods not particularly enumerated in the said Acts, being the Product or Manufacture of any of the said Colonies or Plantations, with Condition, that, in case any Molasses or Syrups, being the Produce of any of the Plantations not under the Dominion of his Majesty, his Heirs or Successors, shall be laden on board such Ship or Vessel, the same shall (the Danger of the Seas and Enemies excepted) be brought, without Fraud or wilful Diminution, by the said Ship or Vessel, to some of his Majesty's Colonies or Plantations in *America*, or to some Port in *Great Britain*; and that the Master or other Person having the Charge of such Ship or Vessel, shall, immediately

<sup>a</sup> Sections 33 to 38 inclusive of this Act are printed in the appendix to the British Case at p. 531.

upon his Arrival at every Port or Place in *Great Britain* or in the *British American* Colonies and Plantations, make a just and true Report of all the Goods laden on board such Ship or Vessel under their true and proper Denominations; and if any such non-enumerated Goods shall be laden on board any such Ship or Vessel before such Bond shall be given, the Goods so laden, together with the Ship or Vessel and her Furniture, shall be forfeited, and shall and may be seized by any Officer of the Customs, and prosecuted in the Manner herein after directed.

XXIV. And it is hereby further enacted by the Authority aforesaid, That every Master or Person having the Charge of any Ship or Vessel shall, before he departs from any *British* Colony or Plantation where he receives his Lading, take a Certificate under the Hands and Seals of the Collector or other principal Officer of the Customs there (which Certificate such Officers are hereby required to grant without Fee or Reward) that Bond hath been given, pursuant to the Directions of this or any other Act of Parliament, as the Case shall require; and the Master or Person having the Charge of such Ship or Vessel, shall keep such Certificate in his Custody till the Voyage is compleated, and shall then deliver the same up to the Collector or other chief Officer of the Customs at the Port or Place where he shall discharge his Lading, either in *Great Britain* or any *British American* Colony or Plantation, on Forfeiture of one hundred Pounds for each and every Offence.

XXV. And it is hereby further enacted, That if any *British* Ship or Vessel laden, as aforesaid, with any Goods of the Produce or Manufacture of any *British* Colony or Plantation in *America*, or having on board any Molasses or Syrups the Produce of any Foreign Colony or Plantation, shall be discovered by any Officer of his Majesty's Customs within two Leagues of the Shore of any *British* Colony or Plantation in *America*, and the Master or Person taking Charge of such Ship or Vessel shall not produce a Certificate that Bond has been given, pursuant to the Directions of this or any other Act of Parliament, as the Case may require; or if he shall not produce such Certificate to the Collector or other chief Officer of the Customs where he shall arrive, either in *Great Britain* or any *British American* Colony or Plantation, such Ship or Vessel, with her Tackle, Apparel and Furniture, and all the Goods therein laden, shall be forfeited, and shall and may be seized and prosecuted as herein after is directed.

XXVI. And it is hereby further enacted by the Authority aforesaid, That the said Bond directed to be given by this Act, with respect to such Non-enumerated Goods, shall continue in force for one

Year from and after the Completion of the Voyage; and in  
216 case no Fraud shall appear within that Time, it shall be lawful for the Commissioners of his Majesty's Customs, or any four or more of them, to direct the said Bond to be delivered up.

XXVII. And it is hereby further enacted by the Authority aforesaid, That from and after the twenty-ninth Day of *September* one thousand seven hundred and sixty-four, all Coffee, Pimento, Cocoa Nuts, Whale Fins, Raw Silk, Hides and Skins, Pot and Pearl Ashes, of the Growth, Production, or Manufacture of any *British* Colony or Plantation in *America*, shall be imported directly from thence

into this Kingdom, or some other *British* Colony or Plantation, under the like Securities, Penalties and Forfeitures, as are particularly mentioned in two Acts of Parliament made in the twelfth and twenty-fifth Years of the Reign of King *Charles the Second*, the former intituled, *An Act for the encouraging and increasing of Shipping and Navigation*, and the latter intituled, *An Act for the Encouragement of the Greenland and Eastland Trades, and for the better securing the Plantation Trade*, or either of them, with respect to the goods in those Acts particularly enumerated; any Law, Custom or Usage to the contrary notwithstanding.

XXVIII. And it is hereby further enacted by the Authority aforesaid, That from and after the twenty-ninth Day of *September* one thousand seven hundred and sixty-four, no Iron, nor any Sort of Wood, commonly called *Lumber*, as specified in an Act passed in the eighth Year of the Reign of King *George the First*, intituled, *An Act for giving further Encouragement for the Importation of Naval Stores, and for other Purposes therein mentioned*, of the Growth, Production or Manufacture of any *British* Colony or Plantation in *America*, shall be there loaden on board any Ship or Vessel to be carried from thence, until sufficient Bond shall be given, with one Surety besides the Master of the Vessel, to the Collector or other principal Officer of the Customs at the Loading Port, in a Penalty of double the Value of the Goods, with Condition, that the said Goods shall not be landed in any Part of *Europe* except *Great Britain*; which Bonds shall be discharged in the manner hereafter mentioned; that is to say, for such of the said Goods as shall be entered for or landed in *Great Britain*, the condition of the Bond shall be, to bring a Certificate in discharge thereof within eighteen Months from the Date of the Bond; and within six Months for such of the said Goods as shall be entered for or landed in any of the *British* Colonies or Plantations in *America*; which respective Certificates shall be under the Hands and Seals of the Collector or other principal Officer of the Customs resident at the Port or Place where such Goods shall be landed, testifying the Landing thereof; and for such of the said Goods as shall be entered for or landed at any other Place in *America, Africa* or *Asia*, to bring the like Certificate within twelve Months, under the Common Seal of the chief Magistrate, or under the Hands and Seals of two known *British* Merchants residing there; or such Bond or Bonds shall be discharged, in either of the said Cases, by Proof upon Oath made by credible Persons, that the said Goods were taken by Enemies, or perished in the Seas.

XXIX. And, for the better preventing Frauds in the Importation or Exportation of Goods that are liable to the Payment of Duties, or are prohibited in the *British* Colonies or Plantations in *America*; It is further enacted by the Authority aforesaid, That from and after the twenty-ninth Day of *September* one thousand seven hundred and sixty-four, no Goods, Wares or Merchandizes, of any Kind whatsoever, shall be shipped or laden on board any Ship or Vessel in any of the *British* Colonies or Plantations in *America*, to be carried from thence to any other *British* Colony or Plantation, without a Sufferance or Warrant first had and obtained from the Collector or other proper Officer of the Customs at the Port or Place where such Goods shall be intended to be put on board; and the Master of every such Ship or Vessel shall, before the same be removed or

carried out from the Port or Place where he takes in his Lading, take out a Cocket or Cockets expressing the Quantity and Quality of the Goods, and Marks of the Package, so laden, with the Merchants Names by whom shipped and to whom consigned; and if they are Goods that are liable to the payment of any Duty, either upon the Importation into, or upon the Exportation from, the said Colonies or Plantations, the said Cocket or Cockets shall likewise distinctly specify that the Duties have been paid for the same, referring to the Times or Dates of Entry and Payment of such Duties, and by whom they are paid; which Cocket or Cockets shall be produced by the Master of such Ship or Vessel, to the Collector or other principal Officer of the Customs at the Port or Place where such Ship or Vessel shall arrive in any of the *British* Colonies or Plantations in *America*, before any Part of the Goods are unladen or put on shore: And if any Goods or Merchandizes shall be shipped as aforesaid without such Sufferance, or the Vessel shall depart and proceed on her Voyage without such Cocket or Cockets, or the Goods shall be landed or put on shore before such Cocket or Cockets are produced at the Port or Place of Discharge, or if the Goods do not agree in all Respects therewith, the Goods, in any or either of those Cases, shall be forfeited and lost; and any Officer of his Majesty's Customs is hereby impowered to stop any such Ship or Vessel, bound as aforesaid, which shall be discovered within two Leagues of the Shore of any of the said *British* Colonies or Plantations in *America*, and to seize and take from thence all the Goods which shall be found on board such Ship or Vessel for which no such Cocket or Cockets shall be produced to him.

“XXX. And whereas *British* Vessels arriving from Foreign Parts at several of the Out Ports of this Kingdom, fully or in part laden abroad with Goods that are pretended to be destined to some Foreign Plantation, do frequently take on board some small Parcels of Goods in this Kingdom, which are entered outwards for some *British* Colony or Plantation, and a Cocket and Clearance thereupon granted for such Goods, under Cover of which the whole Cargoes of such Vessels are clandestinely landed in the *British American* Dominions, contrary to several Acts of Parliament now in force, to the great Prejudice of the Trade and Revenue of this Kingdom;” For Remedy whereof, Be it further enacted by the Authority aforesaid, That from and after the First Day of *May* one thousand seven hundred and sixty-four, no Ship or Vessel shall, upon any Pretence whatsoever, be cleared outwards from any Port of this Kingdom, for any Land, Island, Plantation, Colony, Territory or Place to his Majesty belonging, or which shall hereafter belong unto or be in the Possession or under the Dominion of his Majesty, his Heirs or Successors, in *America* unless the whole and entire Cargo of such Ship or Vessel shall be *bona fide*, and without Fraud, laden, and shipped in this Kingdom; and any Officer of his Majesty's Customs is hereby impowered to stop any *British* Ship or Vessel arriving from any Part of *Europe*, which shall be discovered within two Leagues of the Shore of any of the said *British* Colonies or Plantations in *America*, and to seize and take from thence, as forfeited, any Goods (except as herein after-mentioned), for which the Master or other Person taking the Charge of such Ship or Vessel shall not produce a Cocket or Clearance from the Collector or proper Officer of his

Majesty's Customs, certifying that the said Goods were laden on board the said Ship or Vessel in some Port of *Great Britain*.

XXXI. Provided always, That this Act shall not extend, nor be construed to extend, to forfeit, for want of such Cocket or Clearance, any Salt laden in *Europe* for the Fisheries in *New-England*, *Newfoundland*, *Pennsylvania*, *New York*, and *Nova Scotia*, or any other Place to which Salt is or shall be allowed by Law to be carried; Wines laden in the *Madeiras*, of the Growth thereof; and Wines of the Growth of the *Western Islands*, or *Azores*, and laden there; nor any Horses, Victuals, or Linen Cloth, of and from *Ireland*, which may be laden on board such Ships or Vessels.

XXXII. And it is hereby further enacted, That if any Person or Persons shall counterfeit, raise, alter, or falsify, any Affidavit, Certificate, Sufferance, Cocket, or Clearance, required or directed by this Act, or shall knowingly or willingly make use of any Affidavit, Certificate, Sufferance, Cocket, or Clearance, so counterfeited, raised, altered or falsified, such Person or Persons shall, for every such Offence, forfeit the Sum of five hundred Pounds; and such Affidavit, Certificate, Sufferance, Cocket, or Clearance, shall be invalid and of no Effect.

[Sections 33 to 38 inclusive are printed in the Appendix to the British Case at page 531.]

“XXXIX. And whereas by an Act of Parliament made in the seventh and eighth Year of the Reign of King *William* the Third, intituled, *An Act for preventing Frauds, and regulating Abuses in the Plantation Trade*, all Governors or Commanders in Chief of any of his Majesty's Colonies or Plantations are required to take a solemn Oath, to do their utmost that all the Clauses, Matters, and Things, contained in that Act, and several other Acts of Parliament therein referred to, relating to the said Colonies and Plantations, be punctually and *bona fide* observed, according to the true Intent and Meaning thereof: And whereas divers other good Laws have been since made, for the better regulating and securing the Plantation Trade:” Be it further enacted by the Authority aforesaid, That all the present Governors or Commanders in Chief of any *British* Colony or Plantation shall, before the twenty-ninth Day of *September* one thousand seven hundred and sixty-four, and all who hereafter shall be made Governors or Commanders in Chief of the said Colonies or Plantations, or any of them, before their Entrance into their Government, shall take a solemn Oath, to do their utmost that all the Clauses, Matters and Things contained in any Act of Parliament heretofore made, and now in Force, relating to the said Colonies and Plantations, and that all and every the Clauses contained in this present Act be punctually and *bona fide* observed, according to the true Intent and Meaning thereof, so far as appertains unto the said Governors or Commanders in Chief, respectively, under the like Penalties, Forfeitures, and Disabilities, either for neglecting to take the said Oath, or for wittingly neglecting to do their Duty accordingly, as are mentioned and expressed in said recited Act made in the seventh and eighth Year of the Reign of King *William* the Third, and the said Oath, hereby required to be taken, shall be administered by such Person or Persons as hath or have been, or shall be, appointed to administer the Oath required to be taken by the said Act made in the seventh and eighth Year of the Reign of King *William* the Third.

**XL.** And be it further enacted by the Authority aforesaid, That all Penalties and Forfeitures herein before mentioned, which shall be incurred in *Great Britain*, shall and may be prosecuted, sued for, and recovered in any of his Majesty's Courts of Record at *Westminster*, or in the Court of Exchequer in *Scotland* respectively; and (all necessary Charges for the Recovery thereof being first deducted) shall be divided and applied, one Moiety to and for the Use of his Majesty, his Heirs and Successors, and the other Moiety to the Seizor or Prosecutor.

**XLI.** And it is hereby further enacted and declared, That from and after the twenty-ninth Day of *September* one thousand seven hundred and sixty-four, all Sums of Money granted and imposed by this Act, and by an Act made in the twenty-fifth Year of the Reign of King *Charles* the Second, intituled, *An Act for the Encouragement of the Greenland and Eastland Trades, and for the better securing the Plantation Trade*, as Rates or Duties; and also all Sums of Money imposed as Penalties or Forfeitures, by this or any other Act of Parliament relating to the Customs which shall be paid, incurred or recovered, in any of the *British Colonies* or Plantations in *America*; shall be deemed, and are hereby declared to be Sterling Money of *Great Britain*, and shall be collected, recovered and paid, to the Amount of the Value which such nominal Sums bear in *Great Britain*; and that such Monies shall and may be received and taken according to the Proportion and Value of five Shillings and six Pence the Ounce in Silver; and that all the Forfeitures and Penalties inflicted by this or any other Act or Acts of Parliament relating to the Trade and Revenues of the said *British Colonies* or Plantations in *America*, which shall be incurred there, shall and may be prosecuted, sued for, and recovered, in any Court of Record, or in any Court of Admiralty, in the said Colonies or Plantations where such Offence shall be committed, or in any Court of Vice Admiralty which may or shall be appointed over all *America* (which Court of Admiralty or Vice Admiralty are hereby respectively authorized and required to proceed, hear, and determine the same) at the Election of the Informer or Prosecutor.

**XLII.** And it is hereby further enacted, That all Penalties and Forfeitures so recovered there, under this or any former Act of Parliament, shall be divided, paid, and applied as follows; that is to say, After deducting the Charges of Prosecution from the Gross Produce thereof, one third Part of the Net Produce shall be paid into the Hands of the Collector of his Majesty's Customs at the Port or Place where such Penalties or Forfeitures shall be recovered, for the Use of his Majesty, his Heirs and Successors; one third Part to the Governor or Commander in chief of the said Colony or Plantation; 218 and the other third Part to the Person who shall seize, inform, and sue for the same; excepting such Seizures as shall be made at Sea by the Commanders or Officers of his Majesty's Ships or Vessels of War duly authorized to make Seizures; one Moiety of which Seizures, and of the Penalties and Forfeitures recovered thereon, first deducting the Charges of Prosecution from the gross Produce thereof, shall be paid as aforesaid to the Collector of his Majesty's Customs, to and for the Use of his Majesty, his Heirs and Successors, and the other Moiety to him or them who shall seize, inform, and sue for the same; and Law, Custom, or Usage, to the contrary notwithstanding,

subject nevertheless to such Distribution of the Produce of the Seizures so made at Sea, as well with regard to the Moiety herein before granted to his Majesty, his Heirs and Successors, as with regard to the other Moiety given to the Seizor or Prosecutor, as his Majesty, his Heirs and Successors, shall think fit to order and direct by any Order or Orders of Council, or by any Proclamation or Proclamations, to be made for that Purpose.

XLIII. Provided always, and it is hereby further enacted by the Authority aforesaid, That if the Produce of any Seizure made in *America* shall not be sufficient to answer the Expences of Condemnation and Sale; or if, upon the Trial of any Seizure of any Ship or Goods, a Verdict or Sentence shall be given for the Claimant, in either of those Cases the Charges attending the seizing and prosecuting such Ship and Goods shall and may, with the Consent and Approbation of any four of the Commissioners of his Majesty's Customs, be paid out of any Branch of the Revenue of Customs arising in any of the *British Colonies or Plantations in America*; any thing in this or any other Act of Parliament to the contrary notwithstanding.

XLIV. And it is hereby further enacted by the Authority aforesaid, That from and after the said twenty-ninth Day of *September* one thousand seven hundred and sixty-four, no Person shall be admitted to enter a Claim to any Ship or Goods seized in pursuance of this or any other Act of Parliament, and prosecuted in any of the *British Colonies or Plantations in America*, until sufficient Security be first given, by Persons of known Ability in the Court where such Seizure is prosecuted, in the Penalty of sixty Pounds, to answer the Costs and Charges of Prosecution; and, in default of giving such Security, such Ship or Goods shall be adjudged to be forfeited, and shall be condemned.

XLV. And it is hereby further enacted by the Authority aforesaid, That from and after the twenty-ninth Day of *September* one thousand seven hundred and sixty-four, if any Ship or Goods shall be seized for any Case of Forfeiture, and any Dispute shall arise whether the Customs and Duties for such Goods have been paid, or the same have been lawfully imported or exported, or concerning the Growth, Product, or Manufacture, of such Goods, or the Place from whence such Goods were brought, then, and in such Cases, the Proof thereof shall lie upon the Owner or Claimer of such Ship or Goods, and not upon the Officer who shall seize or stop the same; any Law, Custom, or Usage, to the contrary notwithstanding.

XLVI. And be it further enacted by the Authority aforesaid, That from and after the twenty-ninth Day of *September* one thousand seven hundred and sixty-four, in case any Information shall be commenced and brought to Trial in *America*, on account of any seizure of any Ship or Goods as forfeited by this or any other Act of Parliament relating to his Majesty's Customs, wherein a Verdict or Sentence shall be given for the Claimer thereof; and it shall appear to the Judge or Court before whom the same shall be tried, that there was a probable Cause of Seizure, the Judge or Court before whom the same shall be tried shall certify on the record or other Proceedings, that there was a probable Cause for the Prosecutors seizing the said Ship or Goods; and, in such Case, the Defendant shall not be intitled to any Costs of Suit whatsoever; nor shall the Persons who seized the said Ship or Goods be liable to any Action, or other Suit or Prosecu-



tion, on account of such Seizure; And in case any Action, or other Suit or Prosecution, shall be commenced and brought to Trial against any Person or Persons whatsoever, on account of the seizing any such Ship or Goods, where no information shall be commenced or brought to Trial to condemn the same and a Verdict or Sentence shall be given upon such Action or Prosecution against the Defendant or Defendants, if the Court or Judge before whom such Action or Prosecution may be brought, shall certify in like manner as aforesaid that there was a probable Cause for such Seizure, then the Plaintiff, besides his Ship or Goods so seized, or the Value thereof, shall not be intitled to above two Pence Damages, nor to any Costs of Suit; nor shall the Defendant in such Prosecution be fined above one Shilling.

XLVII. And be it further enacted by the Authority aforesaid, That if any Action or Suit shall be commenced, either in *Great Britain or America*, against any Person or Persons for any thing done in pursuance of this or any other Act of Parliament relating to his Majesty's Customs, the Defendant or Defendants in such Action or Suit may plead the General Issue, and give the said Acts, and the Special Matter, in Evidence at any Trial to be had thereupon, and that the same was done in pursuance and by the Authority of such Act; and if it shall appear so to have been done, the Jury shall find for the Defendant or Defendants; and if the Plaintiff shall be nonsuited, or discontinue his Action after the Defendant or Defendants shall have appeared, or if Judgment shall be given upon any Verdict or Demurrer against the Plaintiff, the Defendant or Defendants shall recover treble Costs, and have the like Remedy for the same as Defendants have in other Cases by Law.

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219 No. 5.—1765: *Extract from British Statute, 5 George III, Cap. 45.*

An Act for more effectually securing and encouraging the Trade of his Majesty's American Dominions; for repealing the Inland Duty on Coffee, imposed by an Act made in the Thirty-second Year of his late Majesty King George the Second; and for granting an Inland Duty on all Coffee imported (except Coffee of the Growth of the British Dominions in America; for altering the Bounties and Drawbacks upon Sugars exported; for repealing Part of an Act made in the Twenty-third Year of his said late Majesty, whereby Bar Iron made in the said Dominions was prohibited to be exported from Great Britain, or carried Coastwise; and for regulating the Fees of the Officers of the Customs in the said Dominions.

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"XXIV. And whereas the Masters of several Ships or Vessels sailing from the *British American Colonies or Plantations*, have cleared out from thence in Ballast, without taking any Goods on board there, purposely to evade giving Bond, as directed by the before-recited Act made in the last Session of Parliament, with Condition, that in case any Molasses or Syrups, being the Produce of any of the Plantations not under the Dominion of his Majesty, his Heirs or Successors, shall be laden on board such Ship or Vessel, the same shall (the Danger of the Seas and Enemies excepted) be brought, without Fraud or wilful Diminution, by the said Ship or Vessel, to some of his Majesty's Colonies or Plantations in *America*,

or to some Port in *Great Britain*; and the said Act may, by such Practices, be rendered ineffectual to answer the Purposes thereby intended;” for Remedy whereof, be it further enacted by the Authority aforesaid, That from and after the tenth Day of *October*, one thousand seven hundred and sixty-five, the said Bond, with the Condition in the said recited Act mentioned, shall be given for every Ship or Vessel that shall set sail from any *British* Colony or Plantation in *America*, whether any Goods shall be there laden on board any such Ship or Vessel, or not; and if any such Ship or Vessel, not having taken any Goods on board as aforesaid, shall set sail, or proceed from any *British* Colony or Plantation in *America*, before such Bond shall be given, such Ship or Vessel, with her Furniture, shall be forfeited, and shall and may be seized and prosecuted in the Manner directed by the said recited act of Parliament; any Thing therein contained to the contrary notwithstanding.

“XXV. And whereas, in and by the said recited Act made in the last Session of Parliament, it is, amongst other Things, enacted, That a Sufferance and Cocket shall be taken from the Officers of the Customs for all Goods, Wares, and Merchandizes, of any Kind whatsoever, which shall be laden on board any Ship or Vessel in any *British* Colony or Plantation in *America*, to be carried from thence to any other Colony or Plantation, as in the said Act is expressed; And whereas the requiring such Sufferances and Cockets for Goods of the Growth or Produce of the said Colonies, which are not liable to any Duty by any Act of Parliament made in *Great Britain*, nor prohibited to be carried from the said Colonies, may lay an unnecessary Restraint upon the Trade and Correspondence of his Majesty’s *American* Subjects, when such Goods are carried merely for the Use and Sustenance of the said Colonies, in Boats or small Vessels without Decks, which do not go to open Sea;” for the Ease therefore of his Majesty’s *American* Subjects in this Particular, be it enacted, That from and after the fifth Day of *July*, one thousand seven hundred and sixty-five, the said recited Act shall not extend, nor be construed to extend, to require any Person to take out any Sufferance or Cocket for any Goods of the Growth, Product, or Manufacture, of the *British* Colonies or Plantations in *America*, which are not, by any Act of Parliament made in *Great Britain*, liable to any Duty either upon the Importation into, or the Exportation from, the said Colonies or Plantations, nor are prohibited to be exported from thence, which shall be laden in any Boat, Flat, Shallop, or other Vessel without a Deck, not exceeding twenty Tons Burthen, and shall be carried within any River, Lake, or other Inland Waters, within the said Colonies or Plantations, and shall not be carried out to Sea farther than one League from the Shore; any Thing in the said recited Act to the contrary notwithstanding.

“XXVI. And whereas by the said last recited Act, made in the last Session of Parliament, one Moiety of all Seizures which shall be made at Sea by the Commanders or Officers of his Majesty’s Ships or Vessels of War, duly authorized to make Seizures, and of the Penalties and Forfeitures recovered thereon, in any of his Majesty’s Colonies or Plantations in *America*, first deducting the Charges of Prosecutions from the gross Produce thereof, is to be paid to him or them who shall seize, inform, or sue for the same; subject to such Distribution as his Majesty, his Heirs and Successors, shall think fit to order and

direct, by any Order or Orders of Council, or by Proclamation or Proclamations, to be made for that Purpose, as in and by the said recited Act may more fully appear: "Now to obviate any Doubts that have arisen, or may arise, concerning the Construction of the words *Seizures made at Sea*; it is hereby further enacted and declared by the Authority aforesaid, That the said Words, *Seizures made at Sea*, in the said recited Act of Parliament, shall extend, and be construed to extend, to all Seizures made by the Commanders or Officers of his Majesty's Ships or Vessels of War, duly authorized for that Purpose, anywhere at Sea, or in or upon any River, and which shall not be actually made on Shore within any *British Colony or Plantation in America*.

XXVII. And, in order to prevent any Disputes concerning what Fees the Officers of his Majesty's Customs in the *British Colonies or Plantations in America* may be intitled to, for making Entries, or other Business done by them in the Execution of their Employ-  
220 ments; be it further enacted by the Authority aforesaid, That until such time as the same shall be otherwise settled by Authority of Parliament, it shall and may be lawful for all and every Collector, and other Officer of his Majesty's Customs, in any *British Colony or Plantation in America*, appointed by any Deputation or Commission from the Commissioners of his Majesty's Customs in *England*, to demand and receive such Fees as they and their Predecessors were intitled to demand and receive, on and before the twenty-ninth Day of *September*, one thousand seven hundred and sixty-four; provided the Fees so taken are not contrary to the express Direction of any Act of Parliament made in *Great Britain*; and in all and every Port or Place in any *British Island in the West Indies*, where no Fees have been received as aforesaid by any Officer of the Customs, such Officer shall, from and after the said fifth Day of *July*, one thousand seven hundred and sixty-five, be intitled to the same Fees as have been received as aforesaid by the like Officers, in the nearest Port in the said Island, before the said twenty-ninth Day of *September*, one thousand seven hundred and sixty-four; and if no Fees have been received as aforesaid by any Officer in any Port in the said Island, such Officer shall, from and after the said fifth Day of *July*, one thousand seven hundred and sixty-five, be intitled to such Fees as have been received by the like Officers in the Island of *Barbadoes*, before the said twenty-ninth Day of *September*, one thousand seven hundred and sixty-four; and in all and every Port or Place on the Continent of *America*, within His Majesty's Dominions, where no Fees have been received as aforesaid by any Officer of the Customs, such Officer shall, from and after the said fifth Day of *July*, one thousand seven hundred and sixty-five, be intitled to the same Fees as have been received as aforesaid by the like Officers, in the nearest Port in the said Colony or Plantation, on or before the said twenty-ninth Day of *September*, one thousand seven hundred and sixty-four; and if no Fees have been received as aforesaid by any Officer in any Port in such Colony or Plantation, such Officer shall, from and after the fifth Day of *July*, one thousand seven hundred and sixty-five, be intitled to such Fees as have been received by the like Officers in the nearest Port within any *British Colony or*

Plantation on or before the said twenty-ninth Day of *September*, one thousand seven hundred and sixty-four; and if no Fees have been received by any Comptroller of His Majesty's Customs for any Port or Place within any Colony or Plantation, or if the Fees received by such Comptroller before the said twenty-ninth Day of *September*, one thousand seven hundred and sixty-four, have not been equal to one-third Part of the Fees received as aforesaid by the Collector of his Majesty's Customs within the same Port or Place; it shall, from and after the said fifth Day of *July*, one thousand seven hundred and sixty-five, in every such Case, be lawful for such Comptroller of his Majesty's Customs, to demand and receive for his Fees, for any Entry or other Business done by him in the Execution of his Employment, from any Merchant or other Person a Sum equal to one-third Part of the Fees received as aforesaid by such Collector for the like Business; and every such Officer shall have and be intitled to the same Remedy for Recovery of such Fees, as is or has been heretofore allowed to any Collector or other Officer; any Law, Bye-Law, or other Act of Assembly made in the said Plantations to the contrary notwithstanding; and if any Collector, Comptroller, or other Officer of his Majesty's Customs in *America*, appointed as aforesaid, shall exact, require, or receive, any other or greater Fees than such as are herein before allowed to be taken, he shall, for the first Offence, forfeit the sum of fifty Pounds; one Moiety of which Penalty shall be to his Majesty, his Heirs and Successors, and the other Moiety to the Person or Persons aggrieved thereby, who shall sue for the same in the proper Court in such Colony or Plantation; and for the second Offence, he shall forfeit his place, and be for ever after incapable of executing any Office or Employment in the Customs.

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No. 6.—1766: *Extract from British Statute 6 George III, Cap. 52.*

An Act for repealing certain Duties, in the British Colonies and Plantations, granted by several Acts of Parliament; and also the Duties imposed by an Act made in the last Session of Parliament upon certain East India Goods exported from Great Britain; and for granting other Duties instead thereof; and for further encouraging, regulating, and securing, several Branches of the Trade of this Kingdom, and the British Dominions in America.

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“XXX. And whereas by an Act made in the twelfth Year of the Reign of King *Charles* the Second, intituled, *An Act for encouraging and increasing of Shipping and Navigation*, and several subsequent Acts of Parliament which are now in Force, it is, amongst other Things, enacted, That for every Ship or Vessel which shall load any Commodities, in those Acts particularly enumerated, at any *British* Plantation, being the Growth, Product, or Manufacture thereof, Bonds shall be given, with one Surety, to the Value of one thousand Pounds if the Ship be of less Burthen than one hundred Tons, and of the Sum of two thousand Pounds if the Ship be of greater Burthen, that the same Commodities shall be brought by such Ship or Vessel to some other *British* Plantation, or to some port in *Great Britain*:” Now, in order more effectually to prevent such Goods being privately carried from any *British* Colony or Plantation in *America* into for-

sign Parts of *Europe* in Vessels that clear out with non-enumerated Goods, as well as to prevent the clandestine Importation of Foreign *European* Goods into the said *British* Colonies; be it further enacted by the Authority aforesaid, That from and after the first day of *January*, one thousand seven hundred and sixty-seven, Bond and Security, in the like Penalty, shall also be given to the Collector, or other Principal Officer of the Customs at any Port or Place in any of the *British American* Colonies or Plantations, with one Surety

221 besides the Master of every Ship or Vessel that shall lade or take on board there any Goods not particularly enumerated in the said Acts, with Condition, that such Goods shall not be landed at any Part of *Europe* to the Northward of *Cape Finisterre*, except in *Great Britain* which Bond shall be discharged in the Manner hereafter mentioned; that is to say For such of the said Goods as shall be entered for, or landed in, *Great Britain*, the Condition of the Bond shall be, to bring a Certificate in Discharge thereof within eighteen Months from the Date of such Bond, and within six Months for such of the said Goods as shall be entered for, or landed in, any of the *British* Colonies or Plantations in *America*; which respective Certificates shall be under the Hands and Seals of the Collector and Comptroller, or other Principal Officer of the Customs, resident at the Port or Place where such Goods shall be landed, testifying the landing thereof; and for such of the said Goods as shall be entered for, or landed at, any other Place where the same may be legally landed, to bring the like Certificate within twelve Months, under the Common Seal of the Chief Magistrate, or under the Hands and Seals of two known *British* Merchants residing there, or such Bond or Bonds shall be discharged, in either of the said Cases, by Proof upon Oath made by creditable Persons, that the said Goods were taken by Enemies, or perished in the Seas; And if any such non-enumerated Goods shall be laden on board any such Ship or Vessel in any *British* Colony or Plantation in *America* before such Bond shall be given, the Goods so laden, together with the Ship or Vessel, and her Furniture, shall be forfeited, and shall and may be seized by any Officer of the Customs, and prosecuted in such Manner as any other Forfeiture against the Laws of the Revenue may be prosecuted.

XXXI. Provided always, and it is hereby declared and enacted by the Authority aforesaid, That nothing herein before contained shall extend, or be construed to extend, to Vessels which shall be *bona fide* bound to some of the Ports of *Spain* within the Bay of *Biscay*.

XXXII. And be it further enacted by the Authority aforesaid, That if any Action or Suit shall be commenced, either in *Great Britain* or *America*, against any Person or Persons for any Thing done in pursuance of this or any other Act of Parliament relating to his Majesty's Customs, the Defendant or Defendants in such Action or Suit may plead the General Issue, and give the said Acts, and the Special Matter, in Evidence, at any Trial to be had thereupon, and that the same was done in pursuance, and by the Authority, of such Act: And if it shall appear so to have been done, the Jury shall find for the Defendant or Defendants; and if the Plaintiff shall be nonsuited, or discontinue his Action after the Defendant or Defendants shall have appeared; or if Judgment shall be given, upon any Verdict or Demurrer, against the Plaintiff; the Defendant or Defendants shall recover Treble Costs, and have the like Remedy for the same as Defendants have in other Cases by Law.

No. 7.—1767: *Extract from British Statute 7 George III, Cap. 46.*

An Act for granting certain Duties in the British Colonies and Plantations in America; for allowing a Drawback of the Duties of Customs upon the Exportation, from this Kingdom, of Coffee and Cocoa Nuts of the Produce of the said Colonies or Plantations; for discontinuing the Drawbacks payable on China Earthen Ware exported to America; and for more effectually preventing the clandestine Running of Goods in the said Colonies and Plantations.

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IX. And, for the more effectual preventing the clandestine Running of Goods in the *British Dominions in America*, be it further enacted by the Authority aforesaid, That from and after the said twentieth Day of *November*, one thousand seven hundred and sixty-seven, the Master or other Person having or taking the Charge or Command of every Ship or Vessel arriving in any *British Colony* or Plantation in *America* shall, before he proceeds with his Vessel to the Place of unlading, come directly to the Custom-house for the Port or District where he arrives, and make a just and true Entry, upon Oath, before the Collector and Comptroller, or other principal Officer of the Customs there, of the Burthen, Contents, and Lading, of such Ship or Vessel, with the particular Marks, Numbers, Qualities, and Contents of every Parcel of Goods therein laden, to the best of his Knowledge; also where and in what Port she took in her lading; of what Country built; how manned; who was Master during the Voyage, and who are Owners thereof; and whether any, and what Goods, during the Course of such Voyage, had or had not been discharged out of such Ship or Vessel, and where: And the Master or other Person having or taking the Charge or Command of every Ship or Vessel, going out from any *British Colony* or Plantation in *America*, before he shall take in, or suffer to be taken into or laden on board any such Ship or Vessel, any Goods, Wares, or Merchandizes, to be exported, shall, in like Manner, enter and report Outwards such Ship or Vessel, with her Name and Burthen, of what Country built, and how manned, with the Names of the Master and Owners thereof, and to what Port or Place he intends to pass or sail: And before he shall depart with such Ship or Vessel out of any such Colony or Plantation, he shall also bring and deliver unto the Collector and Comptroller, or other Principal Officer of the Customs at the Port or Place where he shall lade, a Content in Writing, under his Hand, of the Name of every Merchant, or other Person who shall have laden, or put on board any such Ship or Vessel, any Goods or Merchandize, together with the Marks and Numbers of such Goods or Merchandize: And such Master or Person having or taking the Charge or Command of every such Ship or Vessel, either coming into, or going out of, any *British Colony* or Plantation as aforesaid, whether such Ship or Vessel shall be laden or in Ballast, or otherwise, shall likewise publicly, in the open Custom-house, to the best of his Knowledge, answer upon Oath to such Questions as shall be demanded of him by the Collector and Comptroller, or other

222 Principal Officer of the Customs for such Port or Place, concerning such Ship or Vessel, and the Destination of her Voyage, or concerning any Goods or Merchandize that shall or may be laden on board her, upon Forfeiture of one hundred Pounds Sterling Money of *Great Britain*, for each and every Default or Neglect; to

be sued for, prosecuted, recovered, and divided, in the same Manner and Form, by the same Rules and Regulations in all Respects, as other pecuniary Penalties, for Offences against the Laws relating to the Customs or Trade of his Majesty's Colonies in *America*, may, by any Act or Acts of Parliament now in Force, be prosecuted, sued for, recovered, and divided.

"X. And whereas by an Act of Parliament made in the thirteenth and fourteenth Year of the Reign of King *Charles* the Second, intituled, *An Act for preventing Frauds, and regulating Abuses, in his Majesty's Customs*, and several other Acts now in Force, it is lawful for any Officer of his Majesty's Customs, authorised by Writ of Assistants under the Seal of his Majesty's Court of Exchequer, to take a Constable, Headborough, or other Publick Officer inhabiting near unto the Place, and in the Day-time to enter and go into any House, Shop, Cellar, Warehouse, or Room or other Place, and, in case of Resistance, to break open Doors, Chests, Trunks, and other Package there, to seize, and from thence to bring, any Kind of Goods or Merchandize whatsoever prohibited or uncustomed, and to put and secure the same in his Majesty's Storehouse next to the Place where such Seizure shall be made: And whereas by an Act made in the seventh and eighth Years of the Reign of King *William* the Third, intituled, *An Act for preventing Frauds, and regulating Abuses, in the Plantation Trade*, it is, amongst other Things, enacted, that the Officers for collecting and managing his Majesty's Revenue, and inspecting the Plantation Trade, in *America*, shall have the same Powers and Authorities to enter Houses or Warehouses, to search for and seize Goods prohibited to be imported or exported into or out of any of the said Plantations, or for which any Duties are payable, or ought to have been paid; and that the like Assistance shall be given to the said Officers in the Execution of their Office, as, by the said recited Act of the fourteenth Year of King *Charles* the Second, is provided for the Officers in *England*: But, no Authority being expressly given by the said Act, made in the seventh and eighth Years of the Reign of King *William* the Third, to any particular Court to grant such Writs of Assistants for the Officers of the Customs in the said Plantations, it is doubted whether such Officers can legally enter Houses and other Places on Land, to search for and seize Goods, in the Manner directed by the said recited Acts: To obviate which Doubts for the future, and in order to carry the Intention of the said recited Acts into effectual Execution, be it enacted, and it is hereby enacted by the Authority aforesaid, That from and after the said twentieth Day of *November*, one thousand seven hundred and sixty-seven, such Writs of Assistants, to authorise and empower the Officers of his Majesty's Customs to enter and go into any House, Warehouse, Shop, Cellar, or other Place, in the *British* Colonies or Plantations in *America*, to search for and seize prohibited or uncustomed Goods, in the Manner directed by the said recited Acts, shall and may be granted by the said Superior, or Supreme Court of Justice having Jurisdiction within such Colony or Plantation respectively.

XI. And be it further enacted by the Authority aforesaid, That if any Action or Suit shall be commenced, either in *Great Britain* or *America*, against any Person or Persons for any Thing done in pursuance of this Act, the Defendant or Defendants in such Action or Suit may plead the General Issue, and give this Act, and the Special

Matter, in Evidence at any Trial to be had thereupon; and that the same was done in pursuance and by the Authority of this Act: And if it shall appear so to have been done, the Jury shall find for the Defendant or Defendants: And if the Plaintiff shall be nonsuited, or discontinue his Action after the Defendant or Defendants shall have appeared, or if Judgment shall be given upon any Verdict or Demurrer against the Plaintiff; the Defendant or Defendants shall recover Treble Costs, and have the like Remedy for the same as Defendants have in other Cases by Law.

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No. 8.—1769: *British Statute, 9 George III, Cap. 28.*

An Act to permit the Inhabitants of Jersey and Guernsey to export directly from thence to Newfoundland, or the British Colonies in America, Goods necessary for the Fishery, under certain Restrictions; and to import from thence Non-enumerated Goods (except Rum) and to land the same in the said Islands.

“WHEREAS by an Act made in the Fifteenth Year of the Reign of His late Majesty King Charles the Second, intituled, *An Act for the Encouragement of Trade*, it is, amongst other Things, enacted, That no Commodity of the Growth, Production, or Manufacture of Europe, shall be imported into any Land, Island, Plantation, Colony, Territory, or Place, to His Majesty belonging, or which shall hereafter belong unto, or be in the Possession of, His Majesty, His Heirs, and Successors, in Asia, Africa, or America, (except as therein is excepted) but what shall be *bona fide*, and without Fraud, laden and shipped in England or Wales, or the Town of Berwick upon Tweed, under the Penalties in the said Act mentioned: And whereas by an Act made in the Fourth Year of the Reign of His present Majesty, any Officer of His Majesty's Customs is impowered to stop any British Ship or Vessel arriving from any Part of Europe, which shall be discovered within two Leagues of the Shore of any of the British Colonies or Plantations in America, and to seize and take from thence, as forfeited, any Goods (except such as in the said Act are mentioned) for which the Master or other Person taking Charge of such Ship or Vessel shall not produce a Cocket or Clearance from the Collector or proper Officer of His Majesty's Customs, certifying that the said Goods were laden on board the said Ship or Vessel in some

Part of Great Britain: And whereas the Fishing Trade carried on by the Inhabitants of Jersey and Guernsey at Newfoundland, and other of the British Colonies and Plantations in North America, is highly beneficial to this Kingdom, in the employing great Numbers of Seamen and Ships, and in the Use and Consumption of great Quantities of British Manufactures; and it is therefore expedient, for the Encouragement of that Trade, to permit the said Inhabitants of Jersey and Guernsey to export directly from thence such Articles as are necessary for their carrying on the said Fishery: May it therefore please Your Majesty, that it may be enacted;” and be it enacted by the King's most Excellent Majesty, by and with the Advice and Consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the Authority of the same, That it shall and may be lawful for any



Person or Persons inhabiting in the said Islands of *Jersey* or *Guernsey*, to ship and lade in the said Islands, and to transport directly from thence to *Newfoundland*, or to any other of the *British* Colonies or Plantations in *America*, where the Fishery is now or shall hereafter be carried on, on board any Ship or Vessel which may lawfully trade there, any Sort of Craft, Food, Victuals, Cloathing, or other Goods, fit and necessary for the Fishery in those Parts, or for the Use and Support of the Mariners or other Persons employed on board the Vessels, or on Shore, in carrying on the said Fishery there; such Craft, Cloathing, or other goods, being the Growth, Produce, or Manufacture of *Great Britain*, or of the said Islands of *Jersey* or *Guernsey*, and such Food or Victuals being of the Growth or Produce either of *Great Britain*, *Ireland*, or the said Islands of *Jersey* or *Guernsey*; any thing in the said Acts, or any Law or Statute, to the contrary notwithstanding.

II. Provided always, and it is hereby further declared and enacted by the Authority aforesaid, That the Master or other Person taking Charge of such Ship or Vessel shall produce, to the proper Officer of the Customs in the Colony or Plantation where he shall arrive, a Certificate, under the Hand and Seal of the Governor, Lieutenant or Deputy Governor, or Commander in Chief for the Time being, that Oath had been made by the Shipper of such Goods before the Magistrates of the Royal Courts in *Jersey* or *Guernsey*, respectively, or any Three of them, that the Goods and Victuals so shipped on board such Ship or Vessel are of such Growth, Product, or Manufacture, as aforesaid; which Certificate shall also be attested by the Principal Officer of the Customs in the said Island respectively, who shall certify, that the said Oath was taken in his Presence; and on Failure of producing such Certificate as herein before directed, such Craft, Food, Victuals, Cloathing, or other Goods, found on board any Ship or Vessel, and the Vessel importing the same, shall be liable to be seized and forfeited in the same Manner as they would have been subject and liable if this Act had not been made; any thing herein before contained to the contrary notwithstanding.

“ III. And whereas by an Act made in the Sixth Year of the Reign of His present Majesty, intituled *An Act for repealing certain Duties in the British Colonies and Plantations granted by several Acts of Parliament; and also the Duties imposed by an Act made in the last Session of Parliament upon certain East India Goods exported from Great Britain, and for granting other Duties instead thereof; and for encouraging, regulating, and securing several Branches of the Trade of this Kingdom, and the British Dominions in America*; it is amongst other Things, enacted, that Bond and Security, in the Penalties in the said recited Act mentioned, shall be given to the Collector or other Principal Officer of the Customs at any Port or Place in any of the *British American* Colonies or Plantations, with One Surety besides the Master of every Ship or Vessel that shall lade or take on board there any Non-enumerated Goods, with Condition that such Goods shall not be landed at any Part of *Europe* to the Northward of *Cape Finisterre*, except in *Great Britain*; which Exception was, by an Act made in the Seventh Year of His Majesty's Reign, extended to *Ireland*: And whereas it is reasonable to extend the like Exception to the Islands of *Jersey* and *Guernsey*:” Be it therefore enacted by the Authority aforesaid, That any Non-enumerated Goods,

except Rum, laden as aforesaid in any *British American* Colony or Plantation, may be landed in the said Islands of *Jersey* or *Guernsey*; and that the said Act made in the Sixth Year of His present Majesty's Reign, and all the Regulations therein contained, so far as the same relates to the Bond and Security for landing such Non-enumerated Goods in *Great Britain*, shall extend, and be construed to extend, to the said Islands of *Jersey* and *Guernsey* also, as fully and effectually to all Intents and Purposes as if the said Islands had been excepted and named in the said Act; and that any Bond which may have been or shall be entered into in pursuance of the said recited Acts, or either of them, shall and may be cancelled and discharged by the Certificate under the Hands and Seals of the Magistrates of the Royal Courts of *Jersey* or *Guernsey* respectively, or any Three of them, and the Principal Officer of the Customs in such Island respectively, testifying the Landing such Goods there, in the same Manner as if the said Goods had been landed in *Great Britain* or *Ireland*; any thing in the said Acts to the contrary notwithstanding.

No. 9.—1776: *Extract from British Statute, 16 George III, Cap. 47.*<sup>a</sup>

An Act for the further Encouragement of the Whale Fishery carried on from Great Britain and Ireland, and the British Dominions in Europe; and for regulating the Fees to be taken by the Officers of the Customs in the Island of Newfoundland.

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"III. And whereas by an Act of Parliament, made in the tenth year of his Majesty's Reign, it is, amongst other Things, enacted, That, for and during the Time therein mentioned (which Act hath  
224 been since continued, and is now in Force), the Officers of his Majesty's Customs, and Naval Officers in the *British Colonies* or Plantations in *America*, shall be deemed to be intitled to, and shall and may lawfully demand and receive, such Fees as they and their Predecessors respectively were and had been generally and usually accustomed to demand, take, and receive, before the twenty-ninth Day of *September* one thousand seven hundred and sixty-four, and shall have the like Remedy for the same, according to the true Intent and Meaning of an Act, made in the fifth Year of his said Majesty's Reign, therein particularly recited and referred unto: And whereas, the Officers of his Majesty's Customs now established in the Island of *Newfoundland* not being able to discover and ascertain what Fees were taken and received by their Predecessors, before the said twenty-ninth Day of *September* one thousand seven hundred and sixty-four, Doubts have arisen what Fees they are entitled to demand and receive, in pursuance of the said in Part recited Act:" For Remedy whereof, be it further enacted by the Authority aforesaid, That so long as the said recited Act shall be continued and remain in Force, the Officers of his Majesty's Customs in the said

<sup>a</sup> The provisions of this Act and the Act 10 George III, cap. 37 (above referred to), allowing officers of customs and naval officers to collect fees, were made perpetual by 45 George III, cap. 68, sec. 5 (1805). They remained in force until 1825, when by 6 George IV, cap. 105, they were repealed with many other British Acts relating to customs.

Island of *Newfoundland* shall be, and are hereby declared to have been intitled to ask, demand, take, and receive, such Fees, for all Business done by them in the Execution of their Duty, as were legally demanded and taken by the like Officers of the Customs at the Port of *Halifax* in *Nova Scotia*, on or before the first Day of *January* one thousand seven hundred and sixty-eight, provided the said Fees so taken are not contrary to the express Directions of any Act of Parliament made in *Great Britain*; and the said Officers of the Customs shall have the like Remedy for the same, and be liable to the same Forfeitures and Disabilities for exacting or receiving any greater or other Fees than such as are herein before allowed to be taken, as are prescribed and inflicted in such Cases by the said recited Acts, or either of them, as fully and effectually, to all Intents and Purposes, as if the same had been again repeated and enacted in this present Act.

No. 10.—1788: *Extract from British Statute, 28 George III, Cap. 37.*

A& Act for repealing the Duties on Buck or Deer Skins undressed, Buck or or Deer Skins Indian half-dressed, and Elk Skins undressed, imported, and on Hides and Skins dressed in Oil in this Kingdom, and for granting other Duties in lieu thereof; for laying a Duty on Stuffs printed, painted, stained, or dyed in Great Britain; allowing Deer and other Skins the Produce of Florida to be sold by Auction, free from the Duty charged on such sales; for amending several Laws relative to the Revenue of Excise; and to prevent the Sale of Sweets for Consumption in the Houses of Retailers thereof, who shall not have Licences to sell Beer or Ale.

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XXII. And be it further enacted by the Authority aforesaid, that all Fines, Penalties, and Forfeitures imposed by this Act, shall be sued for, recovered, levied, or mitigated by such Ways, Means, or Methods as any Fine, Penalty, or Forfeiture may be sued for, recovered, levied, or mitigated by any Law or Laws of Excise, or by Action of Debt, Bill, Plaint, or Information, in any of his Majesty's Courts of Record at *Westminster*, or in the Court of Exchequer in *Scotland*, respectively; and that one Moiety of every such Fine, Penalty, or Forfeiture, shall be to his Majesty, his Heirs and Successors, and the other Moiety to him or them who shall inform, discover, or sue for the same.

XXIII. And be it further enacted by the Authority aforesaid, That if any Action or Suit shall be brought or commenced against any Person or Persons for any Thing by him or them done in pursuance of this or any other Act or Acts of Parliament now in force, or hereafter to be made, relating to his Majesty's Revenues of Customs and Excise, or either of them, such Action or Suit shall be commenced within three Months next after the Matter or Thing done, and shall be laid in the proper County; and the Defendant or Defendants in any such Action or Suit may plead the General Issue, and give this Act and the special Matter in Evidence at any Trial to be had thereupon; and if afterwards a Verdict shall pass for the Defendant or Defendants, or the Plaintiff or Plaintiffs shall become nonsuited, or discontinue his, her, or their Action or Prosecution, or Judgment shall be given against him, her, or them, upon Demurrer or otherwise, then such Defendant or Defendants shall have Treble

Costs awarded to him, her, or them, against such Plaintiff or Plaintiffs.

XXIV. And be it further enacted by the Authority aforesaid, That in case any Information or Suit shall be commenced and brought to Trial, on account of the Seizure of any Goods, Wares, or Merchandize seized as forfeited by virtue of this or any other Act or Acts of Parliament now in force, or hereafter to be made, relating to the said Revenues, or either of them, or of any Ship, Vessel, or Boat, or of any Horse, Cattle, or Carriage used or employed in removing or carrying the same, wherein a Verdict shall be found for the Claimer thereof, and it shall appear to the Judge or Court before whom the same shall be tried or heard, that there was a probable Cause of Seizure, the Judge or Court before whom the same shall be tried or heard, shall certify that there was a probable Cause for making such Seizure; and in such Case the Claimant shall not be entitled to any Costs of Suit whatsoever, nor shall the Person or Persons who made such Seizure be liable to any Action, Indictment, or other Suit or Prosecution, on account of such Seizure; and that in case any Action, Indictment, or Prosecution shall be commenced and brought to Trial against any Person or Persons whatsoever, on account of the seizing any such Goods, Wares, or Merchandize, or of any such Ship, Vessel, Boat, Horse, Cattle, or Carriage, used or  
225 employed in removing or carrying the same (whether any Information shall be brought to Trial to condemn the same or not), and a Verdict shall be given against the Defendant or Defendants, if the Court or Judge, before whom such Action, Indictment, or Prosecution shall be tried, shall certify that there was a probable Cause for such Seizure, then the Plaintiff, besides the Thing so seized; or the Value thereof, shall not be entitled to above two Pence Damages, nor to any costs of Suit; nor shall the Defendant, in such Prosecution, be imprisoned or be fined above one Shilling.

XXV. And be it further enacted by the Authority aforesaid, That no writ or Process shall be sued out against any Officer of the Customs or Excise, or against any Person or Persons acting by his or their Order, in his or their Aid, for any Thing done in the Execution or by reason of this or any other Act or Acts of Parliament now in force, or hereafter to be made, relating to the said Revenues, or either of them, until one Calendar Month next after Notice in writing shall have been delivered to him or them, or left at the usual Place of his or their Abode, by the Attorney or Agent for the Person or Persons who intends or intend to sue out such Writ or Process as aforesaid; in which Notice shall be clearly and explicitly contained, the Cause of Action, the Name and Place of Abode of the Person or Persons in whose Name such Action is intended to be brought, and the Name and Place of Abode of the said Attorney or Agent; and that a fee of twenty Shillings and no more shall be paid for the preparing and serving of every such Notice.

XXVI. And be it further enacted by the Authority aforesaid, That it shall and may be lawful to and for every such Officer or Officers, or other Person or Persons acting in his or their Aid, to whom such Notice shall be given as aforesaid, at any Time within one Calendar Month after such Notice shall be given, to tender Amends to the Person or Persons complaining, or to his, her, or their Agent or Attorney; and in case such amends are not accepted, to plead such Tender

in Bar to any Action to be brought against him or them grounded on such Writ or Process, together with the Plea of Not guilty, and any other Plea or Pleas, with Leave of the Court in which such Action shall be brought; and if upon Issue joined thereon, the Jury shall find the Amends so tendered to have been sufficient, then they shall give a Verdict for the Defendant or Defendants; and in such case, or in case the Plaintiff or Plaintiffs shall become nonsuited, or discontinue such Action, or in case Judgment shall be given for such Defendant or Defendants upon Demurrer, then such Defendant or Defendants shall be entitled to the like Costs as he or they would have been entitled to in case he or they had pleaded the General Issue only; and if, upon Issue so joined, the Jury shall find that no Amends were Tendered, or that the same were not sufficient, and also against the Defendant or Defendants in such other Plea or Pleas, then they shall give a Verdict for such Plaintiff or Plaintiffs, and such Damages as they shall think proper.

XXVII. Provided always, and be it further enacted by the authority aforesaid, That no such Plaintiff or Plaintiffs, in any Case where an Action shall be grounded on any Act done by the Defendant or Defendants, shall be permitted to produce any Evidence of the Cause of such Action, except such as shall be contained in the Notice to be given as aforesaid, or shall recover any Verdict against such Officer or Officers, or Person or Persons acting in his or their Aid, unless it shall be proved on the trial of such Action that such Notice was given, and that in default of such Proof the Defendant or Defendants in such Action shall recover a Verdict and Costs as aforesaid.

XXVIII. And be it further enacted by the Authority aforesaid, that in Case any such Officer or Officers, or other Person or Persons acting in his or their Aid, shall neglect to tender Amends, or shall have tendered insufficient Amends before the Action brought, it shall and may be lawful for him or them, by leave of the Court in which such Action shall be brought, at any Time before Issue joined, to pay into Court such Sum of Money as he or they shall think fit, whereupon such Proceedings, Orders, and Judgments shall be had, made, and given in and by such Court as in other Actions where the Defendant is allowed to pay Money into Court.

XXIX. And be it further enacted by the Authority aforesaid, That this Act shall commence and take Effect, as to all such Matters and Things therein contained in respect whereof no special Commencement is hereby directed or provided, from and immediately after the fifth Day of July one thousand seven hundred and eighty-eight.

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No. 11.—1825, July 5: *Extract from British Statute 6 Geo. IV, Cap. 114.*

**An Act to regulate the Trade of the British Possessions Abroad.**

[5TH JULY, 1825.]

“WHEREAS an Act was passed in the present Session of Parliament, intituled *An Act to repeal the several Laws relating to the Customs*; in which it is declared that the Laws of the Customs have

become intricate by reason of the great Number of Acts relating thereto, which have been passed through a long Series of Years; and it is therefore highly expedient, for the Interests of Commerce and the Ends of Justice, and also for affording Convenience and Facility to all Persons who may be Subject to the Operation of those Laws, or who may be authorized to act in the Execution thereof, that all the Statutes now in force relating to the Customs should be repealed, and that the Purposes for which they have from time to time been made should be secured by new Enactments, exhibiting more perspicuously and compendiously the various Provisions contained in them: And Whereas by the said Act all the Laws of the Customs relating to the Trade of the *British* Possessions abroad will be repealed; and it is expedient to make Provisions for the future Regulation of the

Trade of those Possessions after such Repeal shall have effect;" Be it therefore enacted by the King's most Excellent

Majesty, by and with the Advice and Consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the Authority of the same, That from and after the Fifth Day of *January* One thousand eight hundred and twenty six, this Act shall come into and be and continue in full Force and Operation, for the regulating of the Trade of the *British* Possessions abroad.

II. And be it further enacted, That no Goods shall be imported into, nor shall any Goods, except the Produce of the Fisheries in *British* Ships, be exported from, any of the *British* Possessions in *America* by Sea, from or to any Place other than the United Kingdom, or some other of such Possessions, except into or from the several Ports in such Possessions, called "Free Ports," enumerated or described in the Table following; (that is to say,)

Table of Free Ports.

Kingston, Savannah, Le Mar, Montego Bay, Santa Lucia, Antonio, Saint Ann, Falmouth, Maria, Morant Bay, Annotto Bay	Jamaica.
Saint George	Grenada.
Roseau	Dominica.
Saint John's	Antigua.
San Josef	Trinidad.
Scarborough	Tobago.
Road Harbour	Tortola.
Nassau	New Providence.
Pitt's Town	Crooked Island.
Kingston	Saint Vincent.
Port Saint George and Port Hamilton	Bermuda.
Any Port where there is a Custom House	Bahamas.
Bridgetown	Barbadoes.
Saint John's, Saint Andrew's	New Brunswick.
Halifax	Nova Scotia.
Quebec	Canada.
Saint John's	Newfoundland.
George Town	Demerara.
New Amsterdam	Berbice
Castries	Saint Lucia.
Basseterre	Saint Kitt's.
Charles Town	Nevis.
Plymouth	Montserrat.

III. Provided always, That if His Majesty shall deem it expedient to extend the Provisions of this Act to any Port or Ports not enumerated in the said Table, it shall be lawful for His Majesty by Order

in Council to extend the Provisions of this Act to such Port or Ports; and from and after the Day mentioned in such Order in Council, all the Privileges and Advantages of this Act, and all the Provisions, Penalties and Forfeitures therein contained, shall extend and be deemed and construed to extend to any such Port or Ports respectively, as fully as if the same had been inserted and enumerated in the said Table at the Time of passing this Act: Provided also, that nothing hereinbefore contained shall extend to prohibit the Exportation of the Produce of the Fisheries from any Ports or Places in any of the said Possessions in *British* Ships, nor to prohibit the Importation or Exportation of Goods into or from any Ports or Places in *Newfoundland* or *Labrador* in *British* Ships.

“IV. And Whereas by the Law of Navigation Foreign Ships are permitted to import into any of the *British* Possessions abroad, from the Countries to which they belong, Goods the Produce of those Countries, and to export Goods from such Possessions to be carried to any Foreign Country whatever: And Whereas it is expedient that such permission should be subject to certain Conditions;” Be it therefore enacted, That the Privileges thereby granted to Foreign Ships shall be limited to the Ships of those Countries which, having Colonial Possessions, shall grant the like Privileges of trading with those Possessions to *British* Ships, or which, not having Colonial Possessions, shall place the Commerce and Navigation of this Country, and of its Possessions abroad, upon the Footing of the most favoured Nation, unless His Majesty by His Order in Council shall in any Case deem it expedient to grant the Whole or any of such Privileges to the Ships of any Foreign Country, although the Conditions aforesaid shall not in all respects be fulfilled by such Foreign Country.

V. And be it further enacted, That nothing contained in this Act, or any other Act passed in the present Session of Parliament, shall extend to repeal or in any way alter or affect an Act passed in the Fourth Year of the Reign of His present Majesty, intituled *An Act to authorize His Majesty, under certain Circumstances, to regulate the Duties and Drawbacks on Goods imported or exported in Foreign Vessels, and to exempt certain Foreign Vessels from Pilotage*; nor to repeal or in any way alter or affect an Act passed in the Fifth Year of the Reign of His present Majesty, among other Things, to amend the last-mentioned Act, and that all Trade and Intercourse between the *British* Possessions and all Foreign Countries shall be subject to the Powers granted to His Majesty by those Acts.

VI. Provided always, and be it further enacted, That until the Expiration of Ten Years, to be computed from the Twenty fourth Day of *June* One thousand eight hundred and twenty two, every Foreign Ship which previous to that day had been engaged in Trade between any of the *British* Possessions in *America*, and other places in *America*, shall, for the Purposes of this Act, be deemed to be a Ship of the Country or Place to which she had then belonged, if still belonging thereto; any Thing in the Law of Navigation to the contrary notwithstanding.

VII. And be it further enacted, That the several Sorts of Goods enumerated or described in the Table following, denominated “A Table of Prohibitions and Restrictions,” are hereby prohibited to be imported or brought, either by Sea or by Inland Carriage or Navigation, into the *British* Possessions in *America*, or into the Island of

227 *Mauritius*, or shall be so imported or brought, only under the Restrictions mentioned in such Table, according as the several Sorts of such Goods are set forth therein; (that is to say,)

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IX. And be it further enacted, That there shall be raised, levied, collected and paid unto His Majesty the several Duties of Customs, as the same are respectively set forth in Figures in the Table of Duties hereinafter contained, upon Goods, Wares and Merchandize imported or brought into any of His Majesty's Possessions in *America*; (that is to say,)

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X. And be it further enacted, That nothing in this Act or in any other Act passed in the present Session of Parliament, shall extend to repeal or abrogate, or in any way to alter or affect an Act passed in the Eighteenth Year of the Reign of His late Majesty King *George the Third*, intituled *An Act for removing all Doubts and Apprehensions concerning Taxation by the Parliament of Great Britain, in any of the Colonies, Provinces and Plantations in North America and the West Indies, and for repealing so much of an Act made in the Seventh Year of the Reign of His present Majesty, as imposes a Duty on Tea imported from Great Britain into any Colony or Plantation in America, as relates thereto*, nor to repeal or in any way alter or affect any Act now in force, which was passed prior to the last mentioned Act, and by which any Duties in any of the *British Possessions in America* were granted, and still continue payable to the Crown; nor to repeal, or in any way alter or affect an Act passed in the Thirty first Year of the Reign of His late Majesty King *George the Third*, intituled *An Act to repeal certain Parts of An Act passed in the Fourteenth Year of His Majesty's Reign, intituled "An Act for making more effectual Provisions for the Government of the Province of Quebec in North America, and to make further Provisions for the Government of the said Province."*

XI. And be it further enacted. That the Duties imposed by any of the Acts hereinbefore mentioned or referred to, passed prior to the said Act of the Eighteenth Year of His late Majesty's Reign, shall be received, accounted for and applied for the Purposes of those Acts: Provided always, that no greater Proportion of the Duties imposed by this Act shall be charged upon any Article which is subject also to Duty under any of the said Acts, or subject also to Duty under any Colonial Law, than the Amount, if any, by which the Duty charged by this Act shall exceed such other Duty or Duties: Provided nevertheless, that the full Amount of the Duties mentioned in this Act, whether on account of such former Acts. or on account of such Colonial Law, or on account of this Act. shall be levied and recovered and received under the Regulations, and by the Means and Powers of this Act.

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XV. And be it further enacted. That the Master of every Ship arriving in any of the *British Possessions in America*, or the Island of *Mauritius*, or the Islands of *Guernsey, Jersey, Alderney or Sark*, whether laden or in Ballast, shall come directly, and before Bulk be broken, to the Custom House for the Port or District where he ar-



rives, and there make a Report upon Oath in Writing to the Collector or Comptroller, or other proper Officer, of the Arrival and Voyage of such Ship, stating her Name, Country and Tonnage, and if *British* the Port of Registry, the Name and Country of the Master, the Country of the Owners, the Number of the Crew, and how many are of the Country of such Ship, and whether she be laden or in Ballast, and if laden, the Marks, Numbers and Contents of every Package and Parcel of Goods on board, and where the same was laden, and where and to whom consigned, and where any and what Goods, if any, had been unladen during the Voyage, as far as any of such Particulars can be known to him; and the Master shall further answer upon Oath all such Questions concerning the Ship, and the Cargo and the Crew and the Voyage, as shall be demanded of him by such Officer; and if any Goods be unladen from any Ship before such Report be made, or if the Master fail to make such Report, or make an untrue Report, or do not truly answer the Questions demanded of him, he shall forfeit the Sum of One Hundred Pounds; and if any Goods be not reported, such Goods shall be forfeited.

XVI. And be it further enacted, That the Master of every Ship bound from any *British* Possession in *America*, or the Island of *Mauritius*, or the Islands of *Guernsey*, *Jersey*, *Alderney* or *Sark*, shall, before any Goods be laden therein, deliver to the Collector or Comptroller, or other proper Officer, an Entry outwards under his Hand of the Destination of such Ship, stating her Name, Country and Tonnage, and if *British* the Port of Registry, the Name and Country of the Master, the Country of the Owners, the Number of the Crew, and how many are of the Country of such Ship; and if any Goods be laden on board any Ship before such Entry be made, the Master of such Ship shall forfeit the Sum of Fifty Pounds; and before such Ship depart, the Master shall bring and deliver to the Collector or Comptroller, or other proper Officer, a Content in Writing under his Hand of the Goods laden, and the Names of the respective Shippers and Consignees of the Goods, with the Marks and Numbers of the Packages or Parcels of the same, and shall make Oath to the Truth of such Content as far as any of such Particulars can be known to him; and the Master of every Ship bound from any *British* Possession in *America*, or from the Island of *Mauritius*, or from the Islands of *Guernsey*, *Jersey*, *Alderney* or *Sark*, (whether in Ballast or laden,) shall before Departure come before the Collector or Comptroller or other proper Officer, and answer upon Oath all such Questions concerning the Ship and the Cargo, if any, and the Crew and the Voyage, as shall be demanded of him by such Officer; and thereupon the Collector and Comptroller or other proper Officer, if such Ship be laden, shall make out and give to the Master a Certificate of the Clearance of such Ship for her intended Voyage, containing an Account of the total Quantities of the several Sorts of Goods laden therein, or a Certificate of her Clearance in Ballast, as the Case may be; and if the Ship shall depart without such Clearance, or if the Master shall deliver a false Content, or shall not truly answer the Questions demanded of him, he shall forfeit the Sum of One hundred Pounds.

XVII. Provided always, and be it further enacted, That whenever any Ship shall be cleared out from any Port in *Newfoundland* or in any other Part of His Majesty's Dominions, for the Fisheries on the

228 Banks or Coasts of *Newfoundland* or *Labrador*, or the Dependencies thereof, without having on board any Article of Traffic (except only such Provisions, Nets, Tackle and other Things as are usually employed in and about the said Fishery, and for the Conduct and carrying on of the same), the Master of any such Ship shall be entitled to demand, from the Collector or other principal Officer of the Customs at such Port, a Certificate under his Hand that such Ship hath been specially cleared out for the *Newfoundland* Fishery, and such Certificate shall be in force for the Fishing Season of the Year in which the same may be granted, and no longer; and upon the first Arrival in any Port in the said Colony of *Newfoundland* or its Dependencies, of any Ship having on board any such Certificate as aforesaid, a Report thereof shall be made by the Master of such Ship to the principal Officer of the Customs at such Port, and all Ships having such Certificate which has been so reported, and being actually engaged in the said Fishery, or in carrying coastwise to be landed or put on board any other Ships engaged in the said Fishery, any Fish, Oil, Salt, Provisions or other Necessaries for the Use and Purposes thereof, shall be exempt from all Obligation to make any Entry at or obtain any Clearance from any Custom House at *Newfoundland*, upon Arrival at or Departure from any of the Ports or Harbours of the said Colony or its Dependencies during the Continuance of the Fishing Season for which such Certificate may have been granted; and previously to obtaining a Clearance at the End of such Season for any other Voyage at any of such Ports, the Master of such Ship shall deliver up the before mentioned Certificate to the principal Officer of the Customs of such Port: Provided always, that in case any such Ship shall have on board, during the Time the same may be engaged in the said Fishery, any Goods or Merchandizes whatsoever, other than Fish, Seals, Oil made of Fish or Seals, Salt, Provisions and other Things, being the produce of or usually employed in the said Fishery, such Ship shall forfeit the said Fishing Certificate, and shall thenceforth become and be subject and liable to all such and the same Rules, Restrictions and Regulations as Ships in general are subject or liable to.

XVIII. And be it further enacted, That no Goods shall be laden or waterborne to be laden on board any Ship, or unladen from any Ship in any of the *British Possessions in America*, or the Island of *Mauritius*, or the Islands of *Guernsey*, *Jersey*, *Alderney* or *Sark*, until due Entry shall have been made of such Goods, and Warrant granted for the lading or unlading of the same; and that no Goods shall be so laden or waterborne, or so unladen, except at some Place at which an Officer of the Customs is appointed to attend the lading and unlading of Goods, or at some Place for which a Sufferance shall be granted by the Collector and Comptroller for the lading and unlading of such Goods; and that no Goods shall be so laden or unladen except in the Presence or with the Permission in Writing of the proper Officer: Provided always, that it shall be lawful for the Commissioners of His Majesty's Customs to make and appoint such other Regulations for the carrying coastwise of any Goods, or for the removing of any Goods for Shipment, as to them shall appear expedient; and that all Goods laden, Waterborne or unladen, contrary to the Regulations of this Act, or contrary to any Regulations so made and appointed, shall be forfeited.

XIX. And be it further enacted, That the Person entering any such Goods shall deliver to the Collector or Comptroller, or other proper Officer, a Bill of the Entry thereof, fairly written in Words at length containing the Name of the Exporter or Importer, and of the Ship, and of the Master, and of the Place to or from which bound, and of the Place within the Port where the Goods are to be laden or unladen, and the Particulars of the Quality and Quantity of the Goods, and the Packages containing the same, and the Marks and Numbers on the Packages, and such Person shall at the same Time pay down all Duties due upon the Goods, and the Collector and Comptroller, or other proper Officer, shall thereupon grant their Warrant for the lading or unlading of such Goods.

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XXXII. And be it further enacted, That the same Tonnage Duties shall be paid upon all Vessels or Boats of the United States of *America*, importing any Goods into either of the Provinces of *Upper* or *Lower Canada*, as are or may be for the Time being payable in the United States of *America* on *British* Vessels or Boats entering the Harbours of the State from whence such Goods shall have been imported.

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L. And be it further enacted, That it shall be lawful for the Officers of Customs to go on board any Ship in any Port in any *British* Possession in *America*, and to rummage and search all Parts of such Ship for prohibited and uncustomed Goods, and also to go on board any Ship hovering within One League of any of the Coasts thereof, and in either Case freely to stay on board such Ship so long as she shall remain in such Port, or within such Distance; and if any such Ship be bound elsewhere, and shall continue so hovering for the Space of Twenty four Hours after the Master shall have been required to depart, it shall be lawful for the Officer of the Customs to bring such Ship into Port, and to search and examine her Cargo, and to examine the Master upon Oath touching the Cargo and Voyage, and if there be any Goods on board prohibited to be imported into such Possession, such Ship and her Cargo shall be forfeited; and if the Master shall not truly answer the Questions which shall be demanded of him in such Examination, he shall forfeit the Sum of One hundred Pounds.

LI. And be it further enacted, That all Vessels, Boats and Carriages, and all Cattle made use of in the Removal of any Goods liable to Forfeiture under this Act, shall be forfeited, and every Person who shall assist or be otherwise concerned in the Unshipping, Landing or Removal, or in the Harbours of such Goods, or into whose Hands or Possession the same shall knowingly come, shall forfeit the Treble Value thereof, or the Penalty of One hundred Pounds, at the Election of the Officers of the Customs; and the Averment in any Information or Libel to be exhibited for the Recovery of such Penalty, that the Officer proceeding has elected to sue for the Sum mentioned in the Information, and be deemed sufficient Proof of such Election, without any other or further Evidence of such Fact.

LII. And be it further enacted, That all Goods, and all Ships, Vessels and Boats, and all Carriages, and all Cattle liable to For-

feiture under this Act, shall and may be seized and secured by any Officer of the Customs or Navy, or by any Person employed for that Purpose, by or with the Concurrence of the Commissioners of His Majesty's Customs; and every Person who shall in any way hinder, oppose, molest or obstruct any Officer of the Customs or Navy, or any Person so employed as aforesaid, in the Exercise of his Office, or any Person acting in his Aid or Assistance, shall for every such Offence forfeit the Sum of Two hundred Pounds.

LIII. And be it further enacted, That under the Authority of a Writ of Assistance granted by the Superior or Supreme Court of Justice, or Court of Vice Admiralty having Jurisdiction in the Place (who are hereby authorized and required to grant such Writ of Assistance, upon Application made to them for that Purpose by the principal Officers of His Majesty's Customs), it shall be lawful for any Officer of the Customs, taking with him a Peace Officer, to enter any Building or other Place in the the Daytime, and to search for and seize and secure any Goods liable to Forfeiture under this Act; and in case of Necessity, to break open any Doors and any Chests or other Packages for that Purpose; and such Writ of Assistance, when issued, shall be deemed to be in force during the whole of the Reign in which the same shall have been granted, and for Twelve Months from the Conclusion of such Reign.

LIV. And be it further enacted, That if any Person shall by force or Violence assault, resist, oppose, molest, hinder or obstruct any Officer of the Customs or Navy, or other Person employed as aforesaid, in the Exercise of his Office, or any Person acting in his Aid or Assistance, such Person, being thereof convicted, shall be adjudged a Felon and shall be proceeded against as such, and punished at the Discretion of the Court before whom such Person shall be tried.

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LVIII. And be it further enacted, That if any Goods or any Ship or Vessel shall be seized as forfeited under this Act, or any Act hereafter to be made, and detained in any of the *British Possessions in America*, it shall be lawful for the Judge or Judges of any Court having Jurisdiction to try and determine such Seizures, with the Consent of the Collector and Comptroller of the Customs, to order the Delivery thereof on Security by Bond, with Two sufficient Sureties, to be first approved by such Collector and Comptroller, to answer Double the Value of the same in case of Condemnation; and such Bond shall be taken to the Use of His Majesty in the Name of the Collector of the Customs in whose Custody the Goods or the Ship or Vessel may be lodged, and such Bond shall be delivered and kept in the joint Custody of such Collector and his Comptroller, and in case the Goods or the Ship or Vessel shall be condemned, the Value thereof shall be paid into the Hands of such Collector, who shall thereupon, with the Consent or Privity of his Comptroller, cancel such Bond.

LIX. And be it further enacted, That no Suit shall be commenced for the Recovery of any Penalty or Forfeiture under this Act, except in the Name of some superior Officer of the Customs or Navy, or other Person employed as hereinbefore mentioned, or of His Majesty's Advocate or Attorney General for the Place where such Suit shall be

commenced; and if a Question shall arise whether any Person is an Officer of the Customs or Navy, or such other Person as aforesaid, *viva voce* Evidence may be given of such Fact, and shall be deemed legal and sufficient Evidence.

LX. And be it further enacted, That if any Goods shall be seized for Nonpayment of Duties or any other Cause of Forfeiture, and any Dispute shall arise whether the Duties have been paid for the same, or the same have been lawfully imported, or lawfully laden or exported, the Proof thereof shall lie on the Owner or Claimer of such Goods, and not on the Officer who shall seize and stop the same.

LXI. And be it further enacted, That no Claim to any Thing seized under this Act, and returned into any of His Majesty's Courts for Adjudication, shall be admitted, unless such Claim be entered in the Name of the Owner, with his Residence and Occupation, nor unless Oath to the Property in such Thing be made by the Owner, or by his Attorney or Agent by whom such Claim shall be entered, to the best of his Knowledge and Belief; and every Person making a false Oath thereto shall be deemed guilty of a Misdemeanor, and shall be liable to the Pains and Penalties to which Persons are liable for a Misdemeanor.

LXII. And be it further enacted, That no Person shall be admitted to enter a Claim to any Thing seized in pursuance of this Act, and prosecuted in any of the *British Possessions in America*, until sufficient Security shall have been given, in the Court where such Seizure is prosecuted, in a Penalty not exceeding Sixty Pounds, to answer and pay the Costs occasioned by such Claim; and in default of giving such Security, such Things shall be adjudged to be forfeited, and shall be condemned.

LXIII. And be it further enacted, That no Writ shall be sued out against, nor a Copy of any Process served upon any Officer of the Customs or Navy, or other Person as aforesaid, for any Thing done in the Exercise of his Office, until One Calendar Month after Notice in Writing shall have been delivered to him, or left at his usual Place of Abode, by the Attorney or Agent to the Party who intends to sue out such Writ or Process; in which Notice shall be clearly and explicitly contained the Cause of the Action, the name and Place of Abode of the Person who is to bring such Action, and the Name and Place of Abode of the Attorney or Agent; and no Evidence of the Cause of such Action shall be produced, except of such as shall be contained in such Notice, and no Verdict shall be given for the Plaintiff, unless he shall prove on the Trial that such Notice was given; and in default of such Proof, the Defendant shall receive in such Action a Verdict and Costs.

LXIV. And be it further enacted, That every such Action shall be brought within Three Calendar Months after the Cause thereof, and shall be laid and tried in the Place or District where the Facts were committed, and the Defendant may plead the General Issue, and give the Special Matter in Evidence; and if the Plaintiff shall become nonsuited, or shall discontinue the Action, or if upon a Verdict or Demurrer, Judgment shall be given against the Plaintiff, 230 the Defendant shall receive Treble Costs, and have such Remedy for the same as any Defendant can have in other Cases where Costs are given by Law.

LXV. And be it further enacted, That in case any Information or Suit shall be brought to Trial on account of any Seizure made under this Act, and a Verdict shall be found for the Claimant thereof, and the Judge or Court before whom the Cause shall have been tried, shall certify on the Record that there was probable Cause of Seizure, the Claimant shall not be entitled to any Costs of Suit, nor shall the Person who made such Seizure be liable to any Action, Indictment or other Suit or Prosecution, on account of such Seizure; and if any Action, indictment or other Suit or Prosecution shall be brought to Trial against any Person on account of such Seizure, wherein a Verdict shall be given against the Defendant, the Plaintiff, besides the thing seized, or the Value thereof, shall not be entitled to more than Two Pence Damages, nor to any Costs of Suit, nor shall the Defendant in such Prosecution be fined more than One Shilling.

LXVI. And be it further enacted, That it shall be lawful for such Officer, within One Calendar Month after such Notice, to tender Amends to the Party complaining or his Agent, and to plead such Tender in Bar to any Action, together with other Pleas; and if the Jury shall find the Amends sufficient, they shall give a Verdict for the Defendant; and in such Case, or in case the Plaintiff shall become nonsuited, or shall discontinue his Action, or Judgment shall be given for the Defendant upon Demurrer, then such Defendant shall be entitled to the like Costs as he would have been entitled to in case he had pleaded the General Issue only: Provided always, that it shall be lawful for such Defendant, by Leave of the Court, where such Action shall be brought, at any Time before Issue joined, to pay Money into Court as in other Actions.

LXVII. And be it further enacted, That in any such Action, if the Judge or Court before whom such Action shall be tried, shall certify upon the Record that the Defendant or Defendants in such Action acted upon probable Cause, then the Plaintiff in such Action shall not be entitled to more than Two Pence Damages, nor to any Costs of Suit.

LXVIII. And be it further enacted, That all Penalties and Forfeitures recovered in any of the *British Possessions in America* under this Act, shall be divided, paid and applied as follows; (that is to say,) after deducting the Charges of Prosecution from the Produce thereof, One third Part of the net Produce shall be paid into the Hands of the Collector of His Majesty's Customs at the Port or Place where such Penalties or Forfeitures shall be recovered for the Use of His Majesty; one Third Part to the Governor or Commander in Chief of the said Colony or Plantation, and the other Third Part to the Person who shall seize, inform and sue for the same; excepting such Seizures as shall be made at Sea by the Commanders or Officers of His Majesty's Ships of War, duly authorized to make Seizures, One Moiety of which Seizures and of the Penalties and Forfeitures recovered thereon, first deducting the Charges of Prosecution from the gross Produce thereof, shall be paid as aforesaid to the Collector of His Majesty's Customs, to and for the Use of His Majesty, and the other Moiety to him or them who shall seize, inform and sue for the same, any Law, Custom or Usage to the contrary notwithstanding; subject nevertheless to such Distribution of the Produce of the Seizures so made at Sea, as well with regard to the Moiety hereinbefore granted to His Majesty as with regard to the other Moiety

given to the Seizor or Prosecutor, as His Majesty shall think fit to order and direct by any Order or Orders of Council, or by any Proclamation or Proclamations to be made for that Purpose.

LXIX. And be it further enacted, That all Actions or Suits for the Recovery of any of the Penalties or Forfeitures imposed by this Act may be commenced or prosecuted at any Time within Three Years after the Offence committed, by reason whereof such Penalty or Forfeiture shall be incurred; any Law, Usage or Custom to the contrary notwithstanding.

LXX. And be it further enacted, That no Appeal shall be prosecuted from any Decree or Sentence of any of His Majesty's Courts in *America*, touching any Penalty or Forfeiture imposed by this Act, unless the Inhibition shall be applied for and decreed within Twelve Months from the Time when such Decree or Sentence was pronounced.

LXXI. And be it further enacted, That all persons authorized to make Seizures under an Act passed in the Fifth Year of the Reign of His present Majesty, intituled *An Act to amend and consolidate the Laws relating to the Abolition of the Slave Trade*, shall, in making and prosecuting any such Seizures, have the Benefit of all the Provisions granted to Persons authorized to make Seizures under this Act.

LXXII. And be it further enacted, That all Penalties and Forfeitures created by the said Act passed in the Fifth Year of His present Majesty, whether pecuniary or specific, shall (except in Cases specially provided for by the said Act), go and belong to such Persons as are authorized by that Act to make Seizures, in such Shares, and shall and may be sued for and prosecuted, tried, recovered, distributed and applied in such and the like Manner, and by the same Ways and Means, and subject to the same Rules and Directions, as any Penalties and Forfeitures incurred in *Great Britain*, and in the *British Possessions in America* respectively now go and belong to, and may be sued, prosecuted, tried, recovered and distributed, respectively in *Great Britain*, or in the said Possessions, under and by virtue of this Act.

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231 No. 12.—1833, August 28: Extract from *British Statute*, 3-4  
*William IV*, Cap. 59.

An Act to regulate the Trade of the British Possessions Abroad.

[28th August, 1833.]

WHEREAS an Act was passed in the Sixth Year of the Reign of His late Majesty King *George* the Fourth, intituled *An Act to regulate the Trade of the British Possessions Abroad*, whereby the Laws of Customs in relation to the Trade of the *British Possessions Abroad* were consolidated and amended: And whereas since the passing of the said Act divers Acts for the further Amendment of the Law have been found necessary, and it will be of advantage to the Trade and Commerce of the Country that the said Acts should be consolidated into One Act: Be it therefore enacted by the King's most Excellent Majesty, by and with the Advice and Consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled,

and by the Authority of the same, That this Act shall commence upon the First Day of *September* One thousand eight hundred and thirty-three, except where any other Commencement is herein particularly directed.

II. And be it further enacted, that no Goods shall be imported into, nor shall any Goods, except the Produce of the Fisheries in *British* Ships, be exported from, any of the *British* Possessions in *America* by Sea from or to any Place other than the United Kingdom, or some other of such Possessions, except into or from the several Ports in such Possessions, called "Free Ports," enumerated or described in the Table following; (that is to say,)

*Table of Free Ports.*

Kingston, Savannah Le Mar, Montego Bay, Santa Lucia,	
Antonio, Saint Ann, Falmouth, Marfa, Morant Bay,	
Annotto Bay, Black River, Rio Bueno, Port Morant.	Jamaica.
Saint George.	Grenada.
Roseau.	Dominica.
Saint John's.	Antigua.
San Josef.	Trinidad.
Scarborough.	Tobago.
Road Harbour.	Tortola.
Nassau.	New Providence.
Pitt's Town.	Crooked Island.
Kingston.	Saint Vincent.
Port Saint George and Port Hamilton.	Bermuda.
Any Port where there is a Custom House.	Bahamas.
Bridgetown.	Barbadoes.
Saint John's, Saint Andrew's.	New Brunswick.
Halifax, Pictou.	Nova Scotia.
Quebec.	Canada.
Saint Johns.	Newfoundland.
George Town.	Demerara.
New Amsterdam.	Berbice.
Castries.	Saint Lucia.
Basseterre.	Saint Kitt's.
Charles Town.	Nevis.
Plymouth.	Montserrat.
Sydney.	Cape Breton.
Charlotte Town.	Prince Edward's Island.
Anguilla.	Anguilla.

And if any goods shall be imported into any Port or Place in any of the said Possessions contrary hereto, such Goods shall be forfeited.

III. Provided always, That if His Majesty shall deem it expedient to extend the Provisions of this Act to any Port or Ports not enumerated in the said Table, it shall be lawful for His Majesty, by Order in Council, to extend the Provisions of this Act to such Port or Ports; and from and after the Day mentioned in such Order in Council all the Privileges and Advantages of this Act, and all the Provisions, Penalties, and Forfeitures therein contained, (subject nevertheless to the Limitations and Restrictions herein-after provided,) shall extend, and be deemed and construed to extend, to any such Port or Ports respectively, as fully as if the same had been inserted and enumerated in the said Table at the Time of passing this Act: Provided also, that nothing herein-before contained shall extend to prohibit the Importation or Exportation of Goods into or from any Ports or Places in *Newfoundland* or *Labrador* in *British* Ships.



IV. And whereas there are in the said Possessions many Places situated in Rivers and in Bays at which it may be necessary to establish Ports for particular and limited Purposes only; be it therefore enacted, That it shall be lawful for His Majesty, in any Order in Council made for the Appointment of any Free Port, to limit and confine such Appointments respectively to any and such Purposes only as shall be expressed in such Order.

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232 No. 13.—1845, August 4: *Extract from British Statute, 8-9, Victoria, Cap. 93.*

An Act to regulate the Trade of British Possessions abroad.

[4th August, 1845.]

WHEREAS an Act was passed in the Session of Parliament holden in the Third and Fourth Years of the Reign of King William the Fourth, intituled *An Act to regulate the Trade of the British Possessions abroad*, whereby the Laws of Customs in relation to the Trade of the British Possessions abroad were consolidated: And whereas since the passing of the said Act divers Acts and Parts of Acts for the further Amendment of the Law in that respect have been found necessary, and it will be of advantage to the Trade and Commerce of the Country that the said Acts and Parts of Acts should be consolidated into one Act: Be it therefore enacted by the Queen's most Excellent Majesty, by and with the Advice and Consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the Authority of the same, That from and after the passing of this Act the same shall come into and be and continue in full Force for all the Purposes therein mentioned, except where any other Commencement is herein particularly directed.

II. And be it enacted, That no Goods shall be imported into, nor shall any Goods, except the Produce of the Fisheries in British Ships, be exported from any of the British Possessions in America by Sea from or to any Place other than the United Kingdom, or some other of such Possessions, except into or from the several Ports in such Possessions, called "Free Ports," enumerated or described in the Table following; (that is to say,)

TABLE OF FREE PORTS.

*	*	*	*	*	*	*
Quebec.....						Canada
Halifax.....						
Pictou.....						
Liverpool.....						
Yarmouth.....						
Lunenburg.....						
Shelburne.....						
Digby.....						New Scotia.
Windsor.....						
Parrsboro'.....						
Cumberland.....						
New Edinburgh.....						
Arichat.....						
Sydney, Cape Breton.....						

Charlotte Town.....	}	Prince Edward's Island.
George Town.....		
St. John's.....		
_____ Miramichi.....	}	New Brunswick.
_____ Dalhousie.....		
St. Andrew's.....		
_____ Magaguadavic.....	}	Newfoundland.
_____ Campo Bello.....		
St. John's.....		
_____ Harbour Grace.....		

And if any Goods shall be imported into any Port or Place in any of the said possessions contrary hereto, such Goods shall be forfeited: Provided always, that if Her Majesty shall deem it expedient to extend the Provisions of this Act to any Port or Ports not enumerated in the said Table, it shall be lawful for Her Majesty, by Order in Council, to extend the provisions of this Act to such Port or Ports; and from and after the Day mentioned in such Order in Council all the Privileges and Advantages of this Act, and all the Provisions, Penalties, and Forfeitures therein contained (subject nevertheless to the Limitations and Restrictions herein-after provided) shall extend, and be deemed and construed to extend, to any such Port or Ports respectively, as fully as if the same had been inserted and enumerated in the said Table at the Time of passing this Act: Provided also, that nothing herein-before contained shall extend to prohibit the Importation or Exportation of Goods into or from any Ports or Places in *Newfoundland* or *Labrador* in *British* Ships: Provided also, that it shall be lawful to import from the Islands of *Guernsey* and *Jersey* in *British* Ships into any Port or Place in the *British* Possessions in *North America*, at or from whence the *British* Fisheries in *North America* are carried on, any Sort of Craft, Food, Victuals (except Spirits), and any sort of Clothing and Implements and Materials fit and necessary for the said Fisheries, although such Port or Place be not a Free Port.

III. And whereas there are in the said Possessions many Places situated in Rivers and in Bays at which it may be necessary to establish Ports for particular and limited Purposes only; be it therefore enacted, That it shall be lawful for Her Majesty, in any Order in Council made for the Appointment of any Free Port, to limit and confine such Appointments respectively to any and such Purposes only as shall be expressed in such Order.

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## CANADA.

No. 14.—1769, *February 6: Extract from Nova Scotia Statute, 8-9 Geo. III, Cap. 18.*

An Act to amend, render more Effectual, and reduce into One Act, the Several Laws made by the General Assembly of this Province relating to the Duties of Impost on Bear, Rum and other Distill'd Spirituous Liquours.

[6th February, 1769.]

Be it enacted by the Governor Council and Assembly that from and after the Sixth Day of February One Thousand Seven Hundred and Sixty Nine, there shall be paid by the Importers of all Bear,

Rum and other Distill'd Spirituous Liquors, that shall be Imported or brought into this Province (except the produce or manufacture of Great Britain legally and directly imported from thence) the several Rates and Duties as follows viz.

For every Barrel of Beer containing thirty Gallons, two Shillings and Sixpence.

For every Gallon of Rum or other Distill'd Spirituous Liquors five pence.

And be it enacted that all the Rates, Duties and Imposts before mentioned, shall be paid in Current money of this Province by the Importer of any Beer, Rum or other Distill'd Spirituous Liquors, unto the Collector or Receiver or Collectors or Receivers for the time being, for entering and receiving the same, at or before the landing thereof, provided the Same do not exceed Ten pounds, but if the same exceeds Ten pounds, the Collector or Receiver, or Collectors or Receivers for the time being, is and are hereby Authorized on Sufficient Security being given to give Credit for the payment thereof within the Term of three Months.

And be it further enacted that all Masters of Ships Coasting, Fishing and all other Vessells whatever coming into any Harbour or Port within this Province, shall before breaking Bulk, and within Twenty four Hours after his or their Arrival, make Report in writing and upon Oath to the Collector or Receiver, or Collectors or Receivers of the Duties for the time being, of all Beer, Rum and other Distill'd Spirituous Liquors on Board the said Ship or Vessel Specifying the kind of Casks in which the same is Contained, together with the Marks and Numbers thereof, and that he has not landed nor suffered to be Landed sold bartered or exchanged any Beer, Rum or other Distill'd Spirituous Liquors at any Port or place within this Province, or on the Coasts thereof, since his Sailing from the Port or place where the same was Laden on board the said Ship or Vessel for exportation, which Oath the Collector or Receiver or Collectors or Receivers aforesaid, is and are hereby impowered to Administer.

*Form of the Oath.*

"You A. B. do Swear that the Report which you have now made, read and Subscribed, contains a Just and true Account of all the Beer, Rum and other distill'd Spirituous Liquors laden on board the ----- at ----- and that you have not landed or Suffered to be landed, sold or delivered, bartered or exchanged any Beer, Rum or other Distilled Spirituous Liquors at any Port or place within this province or on the Coast thereof Since yur Sailing frm -----

And be it also enacted that if any Beer, Rum or other Distill'd Spirituous Liquors, not duly entered be found on board any Ship or Vessel after Entry made, the Same shall be and is hereby declared forfeited, and shall and may be seized by the Collector or Receiver or Collectors or Receivers, or either of them or by the Land Waiters or Gaugers.

And be it further enacted that upon information made to the Collector or Receiver or Collectors or Receivers or any of them that any Beer, Rum or other distill'd Spirituous Liquors do remain on board any Ship or Vessel that have not been duly entered, in Such case it Shall and may be Lawful for the said Collector or Receiver or Collectors or Receivers or either of them or the said Land waiters or

Gaugers by their Orders, to Search for and Seize all such Beer, Rum and other distill'd Spirituous Liquors so remaining on board not duly enter'd as aforesaid.

And be it also further enacted, that if any Beer, Rum or other Distill'd Spirituous Liquors shall be landed or proved to have been Landed from on board such Ship or Vessell after such Report made as aforesaid, other than such as have been Specified and contained in such Report or Manifest by this Act directed to be made, then and in such Case all such Beer, Rum and other distill'd Spirituous Liquors or the value thereof (to be estimated at the then highest price such commodity shall bear at that time) shall be and are hereby declared to be forfeited, and shall and may be seized by the Collector or Receiver or Collectors or Receivers of the Duties for the time being or the Landwaiters or Gaugers; and if any such Beer Rum or other distill'd Spirituous Liquors shall be conceal'd or Stove, whereby Seizure cannot be made of the same, the Master of such Vessell, owner or receivers upon Conviction thereof shall pay the value thereof agreeable to such estimation.

And be it further enacted, that if any Beer Rum, or other Distill'd Spirituous Liquors shall be found on board any Vessell which have not been duly enter'd or shall be proved to have been  
234 landed Sold delivered barter'd or exchanged Contrary to the Intent and meaning of this Act, or if any Master of any Ship or Vessell shall refuse or neglect to Yield Strict Obedience to the directions prescribed by this Act, in either such cases he shall on Conviction thereof by the Oath of One Credible Witness, forfeit and pay a fine not exceeding One Hundred Pounds currency of this Province.

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And be it further enacted that the Naval Officer of any of the Ports of this Province shall not Clear or give Passes to the Master of any Ship or Vessel outward bound, untill he shall be certified by the Collector or Receiver or Collectors or Receivers of the Duties or either of them, that the said Master has complied with the directions contained in this Act.

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No. 15.—1785, May 18: *Extract from the Charter of the City of Saint John, in the Province of New Brunswick.*<sup>a</sup>

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And we do further of our special grace, certain knowledge and mere motion give and grant unto the said Mayor, Aldermen and Commonalty, and to their successors, that they and their successors shall be the conservators of the water and the river, harbour and bay of the said city, and shall have the sole power of amending and improving the said river, bay and harbour, for the more convenient safe and easy navigating, anchoring, riding and fastening the shipping resorting to the said city, and for the better regulating and ordering the same; and that they the said Mayor, Aldermen and

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<sup>a</sup> Confirmed by New Brunswick Statute 26 Geo. III, Cap. 46.

Commonalty, and their successors, shall and may, as they shall see proper, erect and build such and so many piers and wharves into the said river, as well for the better securing the said harbour and for the lading and unlading of goods as for the making docks and slips for the purposes aforesaid; and that they shall and may have, receive and take reasonable anchorage, wharfage and dockage for the same, without any account thereof to be rendered to Us, our Heirs or Successors. And we do further, for Us, our Heirs and Successors give and grant unto the said Mayor, Aldermen and Commonalty and their successors, that they and their successors shall from time to time, and at all times hereafter, have full power, licence and authority not only to establish, appoint, order and direct the making and laying out all other streets, lanes, alleys, highways, water courses, bridges and slips heretofore made, laid out or used, or hereafter to be made, laid out and used, but also the altering, amending and repairing all such streets, lanes, alleys, highways, water courses, bridges and slips heretofore made, laid out or used, or hereafter to be made, laid out or used in and throughout the said city of *Saint John* and the vicinity thereof, and also beyond the limits of the said city on either side thereof throughout the county of *Saint John* hereinafter mentioned and erected, so always as such piers or wharves so to be erected, or streets so to be laid out, do not extend to the taking away of any persons right or property without his, her or their consent, or by some known laws of the said province of *New-Brunswick*, or by the law of the land.

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No. 16.—1807, *March 5: Extract from New Brunswick Statute, 47 Geo. III, Cap. 10.*

An Act for raising a revenue in this Province.

Passed the 5th of March 1807

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III. And be it further enacted that every Master of any ship or vessel coming into any port or Harbour of this Province, shall within twenty four hours after his arrival, and before breaking Bulk, make report to the said Treasurer or his deputy there in writing by him subscribed and under oath of all the packages or articles whether dutiable or not, on board such ship or vessel, describing and specifying the same, and shall in the same report state that there has not to his knowledge or belief been landed or taken from on board such ship or vessel any such articles or any part thereof within this Province, since the sailing of such ship or vessel from the port or place where such articles were laden on board the same for exportation: and in case of refusal or neglect of any such Master he shall forfeit and pay the sum of one hundred pounds to be recovered by information to be made and filed by His Majesty's Attorney General in the Supreme Court of Judicature of this Province, upon the filing whereof the first process in all cases shall be a *Capias* to be directed to the Sheriff or

Coroner of the place where the Offender may be found by virtue of which process the said Offender shall be held to Bail for his appearance at the return of the process to answer the matters charged in such Information, and if it shall appear or there shall be  
235 reasonable cause to suspect that such articles hereby made dutiable have been clandestinely landed, brought or imported into this Province, before entry and report made as aforesaid, or not being duly entered as aforesaid shall be found on board any ship or vessel after such entry and report, or if any such articles shall have been landed from any ship or vessel after entry and report made as aforesaid, other than were specified in such report, or for which a permit shall not have been obtained agreeably to the provisions of this Act such dutiable articles so landed or found on board contrary to the true intent and meaning of this Act shall be and the same are hereby declared to be forfeited and shall and may be seized and detained by the said Treasurer or his deputy or deputies respectively and information made by His Majesty's Attorney General, and proceedings to condemnation had, in the Supreme Court. And the Master of such ship or vessel and each and every person concerned shall also be liable to the penalty of one hundred pounds to be recovered in manner as is herein first before set forth; all which penalties and forfeitures after deducting the costs and charges of prosecution together with all reasonable charges that may have accrued shall be paid as follows that is to say, one half part to the officer seizing and prosecuting the same articles to condemnation, or complaining against and prosecuting such offender or offenders to conviction, and the other half into the hands of the Treasurer of the Province for the use thereof. And it shall and may be lawful for the said Treasurer and his deputy or deputies respectively, at all times to enter on board any Ship or Vessel, and to examine and search throughout the same for dutiable articles, and there to seize and from thence to carry away all such as are by this Act made liable to seizure; and being authorized by writ of assistance under the seal of His Majesty's Supreme Court, or of the Inferior Court of Common Pleas of the County in which the articles herein after mentioned shall be found (which writ the proper Officers of such Courts respectively are hereby authorized and required to issue upon the allowance or Fiat of one of the Justices of such Court, to be filed together with the affidavit upon which the same is grounded) to take the High Sheriff in person, or his deputy or any Coroner of the County, and in the day time to enter and go into any House Store Warehouse or Outhouse, and in case of resistance to break open Doors, and open and examine casks, chests or other packages, and there to seize and from thence to carry away any such dutiable article whatsoever so landed brought or imported as aforesaid, contrary to the provisions and the true intent and meaning of this Act.

IV. And be it further enacted that in addition to the entry and report herein before required to be made by the Master of any Ship or Vessel, arriving in any port or place in this Province, the owner or consignee of the dutiable articles on board such ship or vessel (and in cases where there may be several Owners or Consignees of the same cargo each Owner or Consignee thereof) shall make report in writing by him subscribed under Oath before the said Treasurer or either of his deputies of all dutiable articles belonging to or consigned to him

as aforesaid, on board such ship or vessel, and before such entry and report shall be made by the Owner or Consignee as aforesaid, the said articles shall not be permitted to be landed from on board such ship or vessel.

V. And be it further enacted that for the recovery of all such duties as are imposed by this Act and shall not be paid at the several times limited for the payment thereof respectively as aforesaid, the said Treasurer or his deputy of the Port or Place in which such Bonds may have been taken, is hereby directed to cause process to be issued against all and every person and persons so standing indebted, and to pursue the same if necessary to final Judgment and execution: And if the said Treasurer or either of his deputies as aforesaid shall not, within one month after the time limited for the payment of any sum so becoming due as aforesaid, cause process to be issued as aforesaid; the said Treasurer or such deputy so neglecting shall be answerable for and chargeable with the same.

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[*The above provisions were continued by sundry Acts until 1818 and were re-enacted by the Act 58 Geo. III, Cap. 20.*]

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UNITED STATES.

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No. 17.—1799, March 2: *Extract from United States Statute, Cap. 22.\**

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CHAP. XXII. —*An Act to regulate the collection of duties on imports and tonnage.*

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“SEC. 65. *And be it further enacted*, That where any bond for the payment of duties shall not be satisfied on the day it may become due, the collector shall, forthwith and without delay, cause a prosecution to be commenced for the recovery of the money thereon by action or suit at law, in the proper court having cognizance thereof; and in all cases of insolvency, or where any estate in the hands of the executors, administrators or assignees, shall be insufficient to pay all the debts due from the deceased, the debt or debts due to the United States, on any such bond or bonds, shall be first satisfied; and any executor, administrator, or assignees, or other person, who shall pay any debt due by the person or estate from whom, or for which, they are acting, previous to the debt or debts due to the United States from such person or estate being first duly satisfied and paid, shall become answerable in their own person and estate, for the debt or debts so due to the United States, or so much thereof as may remain due and unpaid; and actions or suits at law may be commenced against them for the recovery of the said debt or debts, or so much thereof as may

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\* Other sections of this Act are printed in the appendix to the British Case at pages 782–3.

remain due and unpaid, in the proper court having cognizance thereof: *Provided*, that in all cases in which suits or prosecutions shall be commenced for the recovery of duties or pecuniary penalties prescribed by the laws of the United States, the person or persons against whom process may be issued, shall and may be held to special bail, subject to the rules and regulations which prevail in civil suits in which special bail is required: *And provided also*, that if the principal in any bond which shall be given to the United States for duties on goods, wares or merchandise imported, or other penalty, either by himself, his factor, agent, or other person for him, shall be insolvent, or if such principal being deceased, his, or her estate and effects, which shall come to the hands of his or her executors, administrators or assignees, shall be insufficient for the payment of his or her debts, and if in either of the said cases, any surety on the said bond or bonds, or the executors, administrators or assignees of such surety shall pay to the United States the money due upon such bond or bonds, such surety, his or her executors, administrators or assignees, shall have and enjoy the like advantage, priority or preference for the recovery and receipt of the said monies out of the estate and effects of such insolvent, or deceased principal, as are reserved and secured to the United States; and shall and may bring and maintain a suit or suits upon the said bond or bonds in law or equity, in his, her, or their own name or names, for the recovery of all monies paid thereon. And the cases of insolvency mentioned in this section, shall be deemed to extend as well to cases in which a debtor, not having sufficient property to pay all his or her debts, shall have made a voluntary assignment thereof, for the benefit of his or her creditors, or in which the estate and effects of an absconding, concealed or absent debtor, shall have been attached by process of law, as to cases in which an act of legal bankruptcy shall have been committed. And where suit shall be instituted on any bond for the recovery of duties due to the United States, it shall be the duty of the court, where the same may be pending, to grant judgment at the return term, upon motion, unless the defendant shall, in open court, the United States attorney being present, make oath or affirmation that an error has been committed in the liquidation of the duties demanded upon such bond, specifying the errors alleged to have been committed, and that the same have been notified in writing to the collector of the district, prior to the commencement of the return term aforesaid: whereupon, if the court be satisfied, that a continuance until the next succeeding term, is necessary for the attainment of justice, and not otherwise, a continuance may be granted until next succeeding term and no longer. And on all bonds upon which suits shall be commenced, an interest shall be allowed at the rate of six per cent. per annum, from the time when said bonds become due, until the payment thereof.

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SEC. 71. *And be it further enacted*, That if any officer or other person, executing or aiding or assisting in the seizure of goods, shall be sued or molested for any thing done in virtue of the powers given by this act, or by virtue of a warrant granted by any judge, or justice, pursuant to law, such officer or other person may plead the general issue, and give this act and the special matter in evidence; and if in such suit the plaintiff is nonsuited, or judgment pass



against him, the defendant shall recover double costs; and in actions, suits or informations to be brought, where any seizure shall be made pursuant to this act, if the property be claimed by any person, in every such case the *onus probandi* shall lie upon such claimant. And if any person shall forcibly resist, prevent, or impede any officer of the customs or their deputies, or any person assisting them, in the execution of their duty, such person so offending, shall for every such offence, be fined in a sum not exceeding four hundred dollars.

237 And if any master, or other person having the charge or command of any ship or vessel coming into, or arriving at any port or place within the United States, shall obstruct or hinder, or shall be the cause or means of any obstruction or hindrance with such an intent, to any officer of the customs or revenue, in going on board such ship or vessel, for the purpose of carrying into effect any of the revenue laws of the United States, he shall forfeit for every such offence a sum not exceeding five hundred dollars, nor less than fifty dollars; but the *onus probandi* shall lie on the claimant only where probable cause is shown for such prosecution, to be judged of by the court before whom the prosecution is had.

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SEC. 89. *And be it further enacted*, That all penalties, accruing by any breach of this act, shall be sued for, and recovered with costs of suit, in the name of the United States of America, in any court competent to try the same; and the trial of any fact, which may be put in issue, shall be within the judicial district in which any such penalty shall have accrued, and the collector, within whose district the seizure shall be made, or forfeiture incurred, is hereby enjoined to cause suits for the same to be commenced without delay, and prosecuted to effect; and is moreover authorized to receive from the court within which such trial is had, or from the proper officer thereof, the sum or sums so recovered, after deducting all proper charges to be allowed by the said court, and on receipt thereof the said collector shall pay and distribute the same without delay, according to law, and transmit quarter yearly to the treasury on account of all monies by him received for fines, penalties and forfeitures, during such quarter. And all ships or vessels, goods, wares or merchandise, which shall become forfeited in virtue of this act, shall be seized, libeled and prosecuted as aforesaid, in the proper court having cognizance thereof; which court shall cause fourteen days notice to be given of such seizure and libel by causing the substance of such libel, with the order of the court thereon, setting forth the time and place appointed for trial, to be inserted in some newspaper published near the place of seizure, and also by posting up the same in the most public manner, for the space of fourteen days, at or near the place of trial; for which advertisement a sum not exceeding ten dollars shall be paid: And proclamation shall be made in such manner as the court shall direct; and if no person shall appear and claim any such ship or vessel, goods, wares or merchandise, and give bond to defend the prosecution thereof, and to respond the cost in case he shall not support his claim, the court shall proceed to hear and determine the cause according to law; and upon the prayer of any claimant to the court, that any ship or vessel, goods, wares or merchandise, so seized and prosecuted, or any part thereof, should be delivered

to such claimant, it shall be lawful for the court to appoint three proper persons to appraise such ship or vessel, goods, wares or merchandise, who shall be sworn in open court for the faithful discharge of their duty; and such appraisement shall be made at the expense of the party on whose prayer it is granted; and on the return of such appraisement, if the claimant shall, with one or more sureties, to be approved of by the court, execute a bond in the usual form to the United States, for the payment of a sum equal to the sum at which the ship or vessel, goods, wares or merchandise, so prayed to be delivered, are appraised, and moreover produce a certificate from the collector of the district wherein such trial is had, and of the naval officer thereof, if any there be, that the duties on the goods, wares and merchandise, or tonnage duty on the ship or vessel, so claimed, have been paid or secured in like manner, as if the goods, wares or merchandise, ship or vessel had been legally entered, the court shall, by rule, order such ship or vessel, goods, wares or merchandise, to be delivered to the said claimant, and the said bond shall be lodged with the proper officer of the court, and if judgment shall pass in favour of the claimant, the court shall cause the said bond to be cancelled; but if judgment shall pass against the claimant, as to the whole, or any part of such ship or vessel, goods, wares or merchandise, and the claimant shall not within twenty days thereafter pay into the court, or to the proper officer thereof, the amount of the appraised value of such ship or vessel, goods, wares or merchandise so condemned, with the costs, judgment shall and may be granted upon the bond or motion in open court, without further delay. And when any prosecution shall be commenced, on account of the seizure of any ship or vessel, goods, wares or merchandise, and judgment shall be given for the claimant or claimants; if it shall appear to the court before whom such prosecution shall be tried, that there was a reasonable cause of seizure, the said court shall cause a proper certificate or entry to be made thereof, and in such case the claimant or claimants shall not be entitled to costs, nor shall the person who made the seizure or the prosecutor, be liable to action, suit or judgment on account of such seizure and prosecution: *Provided*, that the ship or vessel, goods, wares or merchandise, be after judgment forthwith returned to such claimant or claimants, his, her, or their agent or agents: *And provided*, that no action or prosecution shall be maintained in any case under this act, unless the same shall have been commenced within three years next after the penalty or forfeiture was incurred.

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SEC. 91. *And be it further enacted*, That all fines, penalties, and forfeitures, recovered by virtue of this act (and not otherwise appropriated) shall, after deducting all proper costs and charges, be disposed of as follows: one moiety shall be for the use of the United States, and be paid into the treasury thereof, by the collector receiving the same; the other moiety shall be divided between, and paid in equal proportions to, the collector, and naval officer of the district, and surveyor of the port, wherein the same shall have been incurred, or to such of the said officers as there may be in the said district; and in districts where only one of the aforesaid officers shall have been established, the said moiety shall be given to such officer: *Provided nevertheless*,

recovered in pursuance of information given to such collector, by any person other than the naval officer or surveyor of the district; the one half of such moiety shall be given to such informer, and the remainder thereof shall be disposed of between the collector, naval officer, and surveyor, or surveyors, in manner aforesaid: *Provided also*, that where any fines, forfeitures and penalties, incurred by virtue of this act, are recovered in consequence of any information given by any officer of a revenue cutter, they shall, after deducting all proper costs and charges, be disposed of as follows: one fourth part shall be for the use of the United States, and paid into the treasury thereof  
 238 in manner as before directed; one fourth part for the officers of the customs, to be distributed as hereinbefore set forth; and the remainder thereof to the officers of such cutter, to be divided among them agreeably to their pay: *And provided likewise*, that whenever a seizure, condemnation and sale of goods, wares or merchandise, shall take place within the United States, and the value thereof shall be less than two hundred and fifty dollars, that part of the forfeiture which accrues to the United States, or so much thereof as may be necessary, shall be applied to the payment of the cost of prosecution. *And be it further provided*, that if any officer, or other person entitled to a part or share of any of the fines, penalties, or forfeitures, incurred in virtue of this act, shall be necessary as a witness on the trial of such fine, penalty, or forfeiture, such officer or other person may be a witness upon the said trial; but in such case he shall not receive nor be entitled to any part or share of the said fine, penalty or forfeiture, and a part or share to which he otherwise would have been entitled, shall revert to the United States.

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APPROVED, March 2, 1799.





























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